MISSISSIPPI CODE 1972
Annotated

Local Government—Provisions Common
to Counties and Municipalities
Counties and County Officers

Titles 17 to 19

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FIVE

LIMITATION OF ACTIONS AND PREVENTION OF FRAUDS LOCAL GOVERNMENT — PROVISIONS COMMON TO COUNTIES AND COUNTIES AND COUNTY OFFICERS

§§ 17-1-1 to 19-31-51

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2012 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major byproduct of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This 2012 Replacement Volume 5 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume and the 1995 Replacement Volume 5, and the 2003 Replacement Volume 5. It also constitutes a record of amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2012 Regular Legislative Session.

This volume contains the full text of Titles 15 through 19, of the Mississippi Code of 1972 Annotated, as amended through the 2012 Regular Legislative Session.

Case annotations are included from decisions of the state and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve customers by making annotations more current, LexisNexis has changed the sources that are read to create the annotations. Rather than waiting for cases to appear in printed reporters, we now read court decisions as soon as they are released by the courts. A consequence of this more current reading of cases and the posting of notes online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided in later publications as they become available.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series: through 103 A.L.R.5th
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water St., Charlottesville, VA 22902-5389.

September 2012 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
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— Index
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— Placement of Notes
— Replacement Volumes
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— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading “Attorney General Opinions.” The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 17-1-1. Definitions.

The following words, whenever used in this chapter, shall, unless a different meaning clearly appears from the context, have the following meanings:

(a) "Municipality" means any incorporated city, town or village within the state.

(b) "Governing authority" or "governing authorities," in the case of counties, means the board of supervisors of the county, and, in the case of municipalities, means the council, board, commissioners or other legislative body charged by law with governing the municipality.

(c) "Comprehensive plan" means a statement of public policy for the physical development of the entire municipality or county adopted by resolution of the governing body, consisting of the following elements at a minimum:

(i) Goals and objectives for the long-range (twenty (20) to twenty-five (25) years) development of the county or municipality. Required goals and objectives shall address, at a minimum, residential, commercial and industrial development; parks, open space and recreation; street or road improvements; public schools and community facilities.

(ii) A land use plan which designates in map or policy form the proposed general distribution and extent of the uses of land for residences, commerce, industry, recreation and open space, public/quasi-public facilities and lands. Background information shall be provided concerning the specific meaning of land use categories depicted in the plan in terms of the following: residential densities; intensity of commercial uses; industrial and public/quasi-public uses; and any other information needed to adequately define the meaning of such land use codes. Projections of population and economic growth for the area encompassed by the plan may be the basis for quantitative recommendations for each land use category.

(iii) A transportation plan depicting in map form the proposed functional classifications for all existing and proposed streets, roads and highways for the area encompassed by the land use plan and for the same time period as that covered by the land use plan. Functional classifications shall consist of arterial, collector and local streets, roads and highways, and these classifications shall be defined on the plan as to minimum right-of-way and surface width requirements; these requirements shall be based upon traffic projections. All other forms of transportation pertinent to the local jurisdiction shall be addressed as appropriate. The transportation plan shall be a basis for a capital improvements program.

(iv) A community facilities plan as a basis for a capital improvements program including, but not limited to, the following: housing; schools; parks and recreation; public buildings and facilities; and utilities and drainage.

(d) "Amateur radio service" means those individuals and stations licensed by the Federal Communications Commission to broadcast amateur radio signals regardless of the transmission mode.

SOURCES: Laws, 1988, ch. 483, § 1; Laws, 2001, ch. 314, § 1; Laws, 2006, ch. 340, § 1, eff from and after passage (approved Mar. 13, 2006.)

Cross References — Construction of "comprehensive plan," see § 17-1-11.

County and municipal appropriations to planning and development districts, see § 17-19-1.

Laws concerning counties and county officers generally, see §§ 19-1-1 et seq.

Laws concerning municipalities and their officers, see §§ 21-1-1 et seq.

JUDICIAL DECISIONS

1. Applicability.

Record revealed that the city's comprehensive plan was not amended to comply with the rezoning of a portion of the neighborhood from RB property to R1A property, and at the hearing, the city admitted that the comprehensive plan was not amended to comply with the zoning change, however, the city maintained that it would amend the comprehensive plan if the zoning change was permitted; Miss. Code Ann. §§ 17-1-11, 17-1-15, and 17-1-17 contemplated necessary amendments to comprehensive plans and zoning ordinances, and the trial court did not err by finding that the rezoning was compatible with the comprehensive plan. Bridge v. Mayor & Bd. of Aldermen of Oxford, 995 So. 2d 81 (Miss. 2008).

A county ordinance, ostensibly enacted in the exercise of its police power, which restricted the use of the balance of a landfill such that landfill use would not be permitted, was invalid where the record showed that the county's intent was to zone landfills, but the county did not follow the procedures required by this section. for the enactment of a zoning ordinance. Board of Supvrs. of Harrison County v. Waste Mgmt. of Miss. Inc., 759 So. 2d 397 (Miss. 2000).

State's municipal planning statutes, Miss. Code Ann. § 17-1-1 et seq., did not grant a city authority to adopt impact fees or other revenue raising mechanisms to implement its comprehensive plan. Mayor & Bd. of Aldermen v. Homebuilders Ass'n of Miss., Inc., 932 So. 2d 44 (Miss. 2006).

Nothing in this chapter, which governs zoning, land use and subdivision regulation, suggests that principles of municipal zoning should be applicable outside this specific context. Concerned Citizens to Protect the Isles & Point, Inc. v. State Gaming Comm'n, 735 So. 2d 368 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

Members of Planning Commission of city organized under council-manager plan of government are not governing authorities or officers of city. Madison, May 11, 1990, A.G. Op. #90-0314.

Under Section 17-1-1(c), the "change/mistake rule," is applicable when a city repeals a zoning ordinance and then passes a new zoning ordinance supported by a new comprehensive zoning plan. Mitchell, April 19, 1996, A.G. Op. #96-0189.

Under Section 17-1-1(c) a comprehensive zoning ordinance is required in order for the county to enact an ordinance regulating sexually oriented businesses and nudity. Creekmore, August 16, 1996, A.G. Op. #96-0530.

If the governing authorities of a Town have adopted a comprehensive zoning ordinance in accordance with Section 17-1-1 et seq. and if an individual petitions the governing authorities to rezone specific property for the purpose of opening a child care facility in a residential area, then the governing authorities may in their discretion grant that individual a variance in accordance with Sections 17-1-15 and 17-1-17. McDowell, October 25, 1996, A.G. Op. #96-0666.

A municipality has the authority to independently establish its own land use regulations, and to create, by ordinance, a local planning commission to administer those regulations, pursuant to Section 17-1-11. Gray, Nov. 14, 2005, A.G. Op. 05-0526.

§ 17-1-3. General powers; reasonable accommodation of amateur radio communications.

(1) Except as otherwise provided in Article VII of the Chickasaw Trail Economic Development Compact described in Section 57-36-1, for the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of any municipality, and, with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, are empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required with reference to land used for agricultural purposes, including forestry activities as defined in Section 95-3-29(2)(c), or for the erection, maintenance, repair or extension of farm buildings or farm structures, including forestry buildings and structures, outside the corporate limits of municipalities. The governing authority of each county and municipality may create playgrounds and public parks, and for these purposes, each of such governing authorities shall possess the power, where requisite, of eminent domain and the right to apply public money thereto, and may issue bonds therefor as otherwise permitted by law.

(2) Local land use regulation ordinances involving the placement, screening, or height of amateur radio antenna structures must reasonably accommodate amateur communications and must constitute the minimum practicable regulation to accomplish local authorities' legitimate purposes of addressing health, safety, welfare and aesthetic considerations. Judgments as to the types of reasonable accommodation to be made and the minimum practicable regulation necessary to address these purposes will be determined by local

governing authorities within the parameters of the law. This legislation supports the amateur radio service in preparing for and providing emergency communications for the State of Mississippi and local emergency management agencies.

SOURCES: Codes, 1930, § 2474; 1942, §§ 2890.5, 3590; Laws, 1926, ch. 308; Laws, 1938, ch. 333; Laws, 1946, ch. 292; Laws, 1956, ch. 197, §§ 1-6; Laws, 1958, chs. 520, 532; Laws, 1960, ch. 402; Laws, 1994, ch. 647, § 1; Laws, 1998, ch. 553, § 3; Laws, 2006, ch. 340, § 2, eff from and after passage (approved Mar. 13, 2006.)

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Laws of 2011, ch. 506, § 9, provides:

"SECTION 9. Chapter 397, Laws of 2006, is amended as follows:

"Section 1. Any person who owns a residential structure in Hancock, Harrison or Jackson County that was destroyed by Hurricane Katrina and that was located on property that does not meet the current requirements of the county or municipality in which the property is located for the minimum size of a lot for a residential structure, shall be authorized to have a new residential structure constructed on the property without having to meet the current requirements of the county or municipality for the minimum size of a lot for a residential structure, provided that: (a) the square footage of the new residential structure is not greater than the square footage of the residential structure that was destroyed; (b) the use and purpose of the property will remain the same as it was before Hurricane Katrina; and (c) the construction of the new residential structure is begun before September 1, 2010."

Cross References — Procedures for condemnation of lands for public use generally, see §§ 11-27-1 et seq.

County acting with municipalities located within it, see § 17-1-5.

Planning commission's plan for area development, see § 17-1-11.

Conditions when local regulations govern, see § 17-1-21.

Subdivision regulation by governing authorities, see § 17-1-23.

Board of supervisors' requiring utilities and streets in subdivisions, see § 17-1-23.

Board of supervisors' approval before recording any subdivision plat, see § 17-1-23.

Membership of regional planning commissions, see § 17-1-29.

Scope of regional planning commissions' advisory role in planning matters, see § 17-1-33.

Authority and powers of regional planning commissions, see § 17-1-35.

Authority for tax levies to meet cost of administration, see § 17-1-37.

Association of local communities and counties to solve common problems, see §§ 17-11-1 et seq.

Counties issuing bonds generally, see §§ 19-9-1 et seq.

Municipalities issuing bonds generally, see §§ 21-33-301 et seq.

Exercise of eminent domain by municipalities, see § 21-37-47.

Creation of housing authorities by governing authorities of town, city or county, see § 43-33-5.

Housing projects of an authority being subject to zoning ordinances and regulations, see § 43-33-21.

Special zoning regulations concerning airports, see §§ 61-7-1 et seq.

Establishing zones within which sale of wine and beer may be prohibited, see § 67-3-65.

Immunity of agricultural operations from nuisance actions, see § 95-3-29.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.
3. Residential areas.
4. Commercial areas.
5. Rezoning.
6. Judicial review.

1. In general.

Despite its state agency status, a regional mental health commission was required to adhere to the municipal zoning ordinances of the city when selecting a regional mental health facility site. City of Hattiesburg v. Region XII Comm'n on Mental Health & Retardation, 654 So. 2d 516 (Miss. 1995).

Sections 77-9-1 through 77-9-41 [Repealed], 77-1-23 [Repealed], 77-1-49, 77-9-257, and 77-9-265 [Repealed] vest in the Public Service Commission the authority to supervise and regulate common carrier railroads. While the line of authority between the local authorities and the Public Service Commission's regulation of railroads is not specifically defined by statute, there is a legislative intent that the Public Service Commission has general jurisdiction over common carrier railroads with an official responsibility to the public to see that railroads are operated safely, efficiently, and for the public's benefit. This responsibility which the Commission has to the entire state manifestly cannot be frustrated by any local ordinance or order, whether by a city or county. Hence, any reasonableness test of a zoning ordinance which applies to a railroad must take into account the obligation of the company to serve efficiently and economically all sections of the state dependent on it for services. [These sections have been repealed: 77-1-23, 77-9-1, 77-9-3, 77-9-9, 77-9-11, 77-9-13, 77-9-17 through 77-9-25, 77-9-41] Columbus & G. Ry. v. Scales, 578 So. 2d 275 (Miss. 1991).

Nonconforming uses may be permitted to continue where the uses were lawfully established at the adoption of the zoning ordinance. However, depending on the ordinance provisions, the exemption granted to a pre-existing nonconforming use may be lost upon any change in the use, or abandonment. Barrett v. Hinds County, 545 So. 2d 734 (Miss. 1989).

The procedural rules and regulations found in a city's zoning ordinance are in aid of the city's performance of its legislative zoning function, and it is the city which is vested with the final authority for determining whether its procedural requisites have been met or, if it pleases, waiving them, with 2 exceptions, one of which concerns those cases wherein the municipal zoning authorities may have said to have transgressed some important limitation or procedure imposed by state law, and the other appears where the procedural deficiencies may have said to contravened a citizen's due process rights. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

After a city has adopted a comprehensive zoning ordinance, an amendment to such ordinance depends primarily upon a reevaluation of the change to the general welfare of the municipality as a whole. Blacklidge v. City of Gulfport, 223 So. 2d 530 (Miss. 1969).

A zoning ordinance will not be set aside if its validity is fairly debatable but only if its invalidity is clear. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

Refusal to rezone will be upheld if not wholly unreasonable or an abuse of discretion without any reasonably probable basis in the evidence. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

Under this section [Code 1942, § 2890.5] a county board of supervisors may act in conjunction with municipalities located in the county, or independently. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

1953 zoning ordinances enacted by the city of Tupelo were invalid where the minutes of the mayor and board of aldermen for the period in which the ordinance was enacted were not signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Zoning statute held valid. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

2. Construction and application.

Under Miss. Code Ann. § 17-1-3, a county has the authority to regulate the construction of a building of residence within an unincorporated part of the county, notwithstanding the zoning classification of the land upon which the residence is to be constructed. Section 17-1-3 empowers a county to regulate a building of residence within the incorporated parts of that county irrespective to the land's classification; thus, it applied to a builder who sought to build a single residence in a floodplain area, and within an unincorporated part of the county that was zoned as A-1 agricultural. Ladner v. Hancock County, 899 So. 2d 899 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005).

Private, nonprofit horse arena in an agricultural district is a permitted agricultural use under Miss. Code Ann. § 17-1-3. Hinds County Bd. of Supvrs. v. Leggette, 833 So. 2d 586 (Miss. Ct. App. 2002).

County board of supervisors lacked authority to seek removal of a horse riding arena from the owner's agricultural land, as the arena was a "farm structure" which, under Miss. Code Ann. § 17-1-3, was a use of right that required no permit. Hinds County Bd. of Supvrs. v. Leggette, 833 So. 2d 586 (Miss. Ct. App. 2002).

In a very limited way, a common carrier railroad may be subject to local zoning regulations. Thus, a county board of supervisors had the statutory authority to adopt a zoning ordinance restricting use by a railroad of property owned by it when the ordinance was adopted. Columbus & G. Ry. v. Scales, 578 So. 2d 275 (Miss. 1991).

The zoning statutes, as implemented by the ordinances of a city establishing a comprehensive plan for land use, empowered the city governing authorities to deny the request of landowners to construct two-family duplexes on lots smaller than the minimum provided for single family residences, in an area zoned for single family residences, provided the action was not unreasonable, arbitrary, capricious, nor an abuse of discretion. City of Jackson v. Ridgway, 258 So. 2d 439 (Miss. 1972).

The refusal of a city council to permit the purchasers of an undeveloped tract zoned A-1 residential, requiring a minimum of 16,000 square feet per lot and tract in a developed residential neighborhood, to allow construction of a duplex on a lot with an area of 9,000 square feet, or to permit the purchasers to subdivide their tract into 10 lots with an area of 9,000 square feet each, was neither unreasonable, arbitrary, capricious, an abuse of discretion, nor unlawful. City of Jackson v. Ridgway, 258 So. 2d 439 (Miss. 1972).

Under modern day conditions any plan for the development of land must reckon with the parking problem, particularly in heavily populated areas, so that off-street parking regulations come within the delegation of zoning power to the city, and the city has the power to make reasonable regulations to prevent street congestion. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

In an action to enjoin the use of defendant's house as a beauty parlor, allegedly in violation of a protective covenant, it was no defense that the plaintiffs had not exhausted their administrative remedies in that they had not followed their prior objection to the defendant's successful application to the county board of supervisors for a use permit to its ultimate disposition, since the litigation arose from personal rights derived from a protective covenant, and a county board of supervisors is without authority, by the issuance of a use permit, to change or alter a solemn personal contract with regard to the use of land. Sullivan v. McCallum, 231 So. 2d 801 (Miss. 1970).

Where a zoning ordinance prohibited the operation of a filling station in a local business zone, and the store proprietor's application for a permit disclosed his knowledge that property was in such zone, an ordinance would not be invalidated merely because the valid zoning use map referred to in the ordinance had been filed away following the enactment of a later, and supposedly valid, zoning ordinance. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Under city zoning ordinances providing for the continued use of property in the manner it was being used at the time of the ordinance, and also providing that such use might be extended throughout the building if no structural alterations were made, except as required by law, and defining structural alterations as any change in supporting members of a building, such as bearing walls, columns, beams or girders, the mayor and board of aldermen were not warranted in designating as a mere variation the proposed additions to a storehouse building, which would have resulted in the building being approximately one and seven-tenths times as large as the existing building. Mayor & Bd. of Aldermen v. White, 230 Miss. 698, 93 So. 2d 852 (1957).

The construction and maintenance of a warehouse for the reception of freight on railroad right-of-way, which had existed as such for more than 50 years prior to the adoption of an ordinance making most of such right-of-way a residential district, held to be a reasonable use of such right-of-way in facilitating the company's principal business and no more objectionable than the operation of trains, and to be authorized by provision of ordinance excepting existing nonconforming uses; and, accordingly, action of city authorities in denying such use of the property was an unreasonable and arbitrary interpretation of the ordinance which tended to deprive the company of its property and use thereof in violation of both Federal and State Constitutions. Jones v. City of Hattiesburg, 207 Miss. 491, 42 So. 2d 717 (1949).

3. Residential areas.

Where there was a blind institution, church, hospital, and guest house in neighborhood, but all adjacent property in one direction was occupied by residences, property held properly placed within residential zone. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

4. Commercial areas.

Where during the year and a half between the adoption of a comprehensive zoning ordinance and a rezoning ordinance, the streets and alleys in a tract had been closed, a branch of a national bank had been established and a large discount house had relocated in the vicinity, and the new store which had been constructed could become part of an all weather regional shopping mall if the tract were rezoned commercial, such changes considered together were sufficient to justify the rezoning of the tract from residential to commercial. Currie v. Ryan, 243 So. 2d 48 (Miss. 1970).

Property owners were not entitled as a matter of law to a rezoning of their property from residential to commercial even if the record revealed a material change in circumstances since the Supreme Court ruled on a zoning case in 1966, which case involved the same property. City of Jackson v. Gaddy, 241 So. 2d 364 (Miss. 1970).

5. Rezoning.

Upon evidence establishing the change and public need requirements of the rule that, absent mistake in the original zoning, reclassification may be had only where there has been change in the character of the neighborhood such an extent as to justify the rezoning, coupled with a public need for rezoning, the Supreme Court would defer to the judgment of the municipal zoning authorities in rezoning from single family residential use to a special use recreation district of a 50-acre tract of land located in a flood plain. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

Agreement between shopping mall and members of a nearby residential area creating a buffer zone between their property and the proposed mall expansion site was private in nature and, under the evidence, was not basis of the rezoning decision, with the result that such decision did not approve any discriminatory protective covenant. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

Before property is reclassified from one zone to another, those seeking the change must prove by clear and convincing evidence either, (1) that there was a mistake in the original zoning, or (2) the character of the neighborhood has changed to such an extent as to justify rezoning and that public need exists for rezoning. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

Finding of city council that there was public need for, and a change in neighborhood justifying, rezoning from residential to commercial of a parcel into which a shopping mall wished to expand, was not arbitrary or capricious where in its determinative process the council looked at increased population growth, revitalization of the downtown central business district, increased commercial activity, comprehensive planning, change in economic character, deterioration, and buyer's trend. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

Courts may not overturn city council's denial of application to rezone 1.5 acre tract from single family residential to townhouse residential zone where city council decision has ample factual basis and council has followed applicable zoning law. Mayor & Comm'rs of Jackson v. Wheatley Place, Inc., 468 So. 2d 81 (Miss. 1985).

Adoption by each municipality of a comprehensive zoning plan designed to bring about coordinated physical development of the community, consistent with its present and future needs, is contemplated by §§ 17-1-11(1) and 17-1-3, under which the comprehensive plan contemplates a dynamic community, recognizes the inevitability of change, and balances the community's gross needs and the individual's interest in using his property as he sees fit. Woodland Hills Conservation Ass'n v. City of Jackson, 443 So. 2d 1173 (Miss. 1983).

While as a general rule zoning authorities may not impose conditions and limitations in an order rezoning property, a provision requiring that before a permit could be issued to construct buildings on certain property, adequate off-street parking must be provided for, did not invalidate the order. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

The rezoning of a tract from residential to general commercial, was not arbitrary, capricious, discriminatory, illegal, or without substantial evidential basis, where the tract was bounded on two sides by property zoned commercial, on a third side by a highway, and on the fourth side by 20 acres of vacant property. Currie v. Ryan, 243 So. 2d 48 (Miss. 1970).

Refusal to rezone as commercial eight acres of property within a residential zone is justified when it is immediately across the street from a hospital and is bound on three sides by expensive homes, and bounding streets are not direct arteries and not of sufficient width to handle increased traffic. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

6. Judicial review.

Applicants for a conditional use permit have the burden of proving by a preponderance of the evidence that they have met the elements/factors essential to obtaining the permit. If the governing authority's decision is founded upon substantial evidence, then it is binding upon an appellate court. Barnes v. Board of Supvrs., 553 So. 2d 508 (Miss. 1989).

Before any court will consider invalidation of the action of a municipal board for failure to comply with formalities, the opponents must demonstrate affirmatively that the formalities were not met. In other words, there is a rebuttable presumption that all formalities incident to such an action were complied with. Luter v. Hammon, 529 So. 2d 625 (Miss. 1988).

Decision of city fathers in drawing and maintaining line past which commercial development would not be allowed was not arbitrary, capricious, or unreasonable, where there was substantial evidence supporting both sides of rezoning application, thus making ultimate decision fairly debatable; same reasoning applied to denial of assertion that zoning restriction amounted to confiscatory taking in violation of due process of law under constitution because that issue is intertwined with review of whether zoning decision is arbitrary, capricious, or unreasonable. Saunders v. City of Jackson, 511 So. 2d 902 (Miss. 1987).

Upon reviewing zoning cases the cause is not tried de novo but the circuit court acts as an appellate court, and in that capacity it must examine the record to determine whether council's action was arbitrary, capricious, or confiscatory, and whether it is supported by substantial evidence. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

Zoning is a legislative matter and the courts will not interfere or substitute their judgment, but will limit their reviews to whether the zoning was reasonable, arbitrary, discretionary, confiscatory, or an abuse of discretion. Blacklidge v. City of Gulfport, 223 So. 2d 530 (Miss. 1969).

Courts cannot interfere unless action of city commissioners in placing certain property in residential zone was unreasonable and arbitrary. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

Where ordinance designated property as residential property, and question was doubtful, court would not interfere by mandamus to compel issuance of building permit. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

ATTORNEY GENERAL OPINIONS

County board of supervisors may use county funds to buy land with clubhouse, ball field, and swimming pool from nonprofit corporation, to create county park in unincorporated area of county. Barrett, March 11, 1992, A.G. Op. #92-0152.

Board of supervisors may furnish equipment and county labor to develop soccer fields on county property which will be available to all citizens of county where property was not surplus property no longer needed by county and therefore could not be leased pursuant to Section 19-7-3. Gex, June 16, 1993, A.G. Op. #93-0425.

Statute provides authority for county to lease property and spend funds for purpose of recreating park destroyed by tornado located in unincorporated area of county but county could not sublease property back to owner. Trapp, July 8, 1993, A.G. Op. #93-0485.

Section 17-1-3 authorizes a municipality to create a park and also grants a county authority to create a park within the unincorporated areas of the county. The city and the county may enter into an interlocal agreement under which the city provides property for a softball/baseball facility and the county contributes services to develop the field. Gowan, September 6, 1996, A.G. Op. #96-0573.

A municipality may adopt an ordinance limiting the number of trailers per lot and, in so doing, enact a zoning ordinance regulating and restricting the erection, construction, alteration, repair or use of buildings, structures or land; if the governing authorities desire to adopt such an ordinance, they should do so as part of a comprehensive plan and follow the necessary statutory procedures for same. James, January 30, 1998, A.G. Op. #98-0016.

The statute allows either a county or town to enter into a lease whereby the county or town would lease property and then maintain it as a public ballfield. Pierce, April 24, 1998, A.G. Op. #98-0189.

A Board of Supervisors has no authority to exercise general powers pursuant to the statute in an incorporated area of the county classified as a village. Buntin, June 5, 1998, A.G. Op. #98-0280.

Neither a county nor a municipality is empowered to act pursuant to the statute in an area which is incorporated, but which has not reached the classification of a city or town. Buntin, June 5, 1998, A.G. Op. #98-0280.

A county may donate funds to a municipality for the establishment, operation, and maintenance of a municipal park within the donating county when, by the terms of the donation, such park is available to all citizens of the county. Shaw, August 14, 1998, A.G. Op. #98-0471.

Municipal governing authorities have the power to enact zoning regulations, consistent with the comprehensive plan for the municipality, which restrict the location of certain industries, such as the drilling of oil and gas wells, to specific zones within the municipality; ordinances which prohibit drilling in a particular location will be upheld only if they bear a reasonable relationship to protecting the public health, safety, morals, or general welfare. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

A county board of supervisors can authorize the contribution of money and services to a municipality for purchasing and installation of playground equipment in a municipal park to be utilized by all citizens. Griffin, Apr. 26, 2002, A.G. Op. #02-0200.

A city's "reasonable zoning restrictions aimed at public safety and the elimination of public nuisances" are applicable to a school district. Stockton, Feb. 14, 2003, A.G. Op. #03-0051.

A county is not exempt from municipal building codes; further, county land use regulations are not applicable within the boundaries of a municipality where there is a valid and lawfully adopted municipal ordinance on the same subject matter. Stockton, Feb. 14, 2003, A.G. Op. #03-0051.

Both a city and housing authority possess the authority to exercise the power of eminent domain to acquire property to be used as a park or recreational area for the benefit of citizens of the municipality and/or residents of the housing authority properties. White, Feb. 27, 2004, A.G. Op. 04-0075.

A county may lease property from a non-profit corporation for a nominal amount and may expend funds for the upkeep of the property to the extent that those expenditures do not exceed a reasonable rental payment. The county may also employ a non-profit corporation to manage and operate the park in accordance with the rules and regulations of the board and may allow the non-profit to retain concession profits and admission fees, as authorized by the board, as payment for such services. Chamberlin, Aug. 13, 2004, A.G. Op. 04-0318.

A board of supervisors, through a duly adopted interlocal governmental cooperation agreement with a municipal public school district, may construct or provide funds to construct a playground or park on property owned by the municipal school district for recreational use by the school and by all citizens of the county. Meadows, Aug. 20, 2004, A.G. Op. 04-0368.

Section 17-1-3 prohibits requiring the issuing of building permits and payment of building permit fees for farm buildings or other farm structures. Section 17-2-7 prohibits the enforcement of building codes, including the International Building Codes, on farm structures. However, such exemptions do not include farm residences. Cummings, Sept. 29, 2006, A.G. Op. 06-0436.

A municipality may build a baseball field and may permit the use of its parks by private entities provided that it has established a uniform policy for use by all persons and groups. Jinks, Oct. 25, 2006, A.G. Op. 06-0505.

A county or county park commission may contract construction and management of a county park to a third party, including a nonprofit corporation, but must first advertise and let the project for public bids under Miss. Code Ann. § 31-7-13. Allen, March 30, 2007, A.G. Op. #07-00106, 2007 Miss. AG LEXIS 95.

RESEARCH REFERENCES

ALR. Construction and application of statute or ordinance requiring notice as prerequisite to granting variance or exception to zoning requirement. 38 A.L.R.3d 167.

Zoning or other public restrictions on the use of property as affecting rights and remedies of parties to contract for the sale thereof. 39 A.L.R.3d 362.

Requirement that zoning variances or exceptions be made in accordance with comprehensive plan. 40 A.L.R.3d 372.

Validity and construction of "zoning with compensation" regulation. 41 A.L.R.3d 636.

Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof. 43 A.L.R.3d 862.

Zoning: planned unit, cluster, or greenbelt zoning. 43 A.L.R.3d 888.

Retroactive effect of zoning regulation in absence of saving clause, on pending application for building permit. 50 A.L.R.3d 596.

Validity, construction, and application of zoning ordinance relating to operation of junkyard or scrap metal processing plant. 50 A.L.R.3d 837.

Zoning: right to resume nonconforming use of premises after involuntary break in the continuity of nonconforming use caused by difficulties unrelated to governmental activity. 56 A.L.R.3d 14.

Zoning: right to resume nonconforming use of premises after involuntary break in the continuity of nonconforming use caused by governmental activity. 56 A.L.R.3d 138.

Right to resume nonconforming use of premises after voluntary or unexplained break in the continuity of nonconforming use. 57 A.L.R.3d 279.

Zoning: right to repair or reconstruct building operating as nonconforming use, after damage or destruction by fire or other casualty. 57 A.L.R.3d 419.

Validity and construction of zoning regulation respecting permissible use as affected by division of lot or parcel by zone boundary line. 58 A.L.R.3d 1241.

Applicability of zoning regulations to waste disposal facilities of state or local governmental entities. 59 A.L.R.3d 1244.

What constitutes "church," "religious use," or the like within zoning ordinance. 62 A.L.R.3d 197.

Validity and construction of zoning ordinance requiring developer to devote specified part of development to low and moderate income housing. 62 A.L.R.3d 880.

Validity of zoning ordinance deferring residential development until establishment of public services in area. 63 A.L.R.3d 1184.

What constitutes "school," "educational use," or the like within zoning ordinance. 64 A.L.R.3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education. 64 A.L.R.3d 1138.

Zoning regulations as applied to private and parochial schools below the college level. 74 A.L.R.3d 14.

Zoning regulations as applied to public elementary and high schools. 74 A.L.R.3d 136.

Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.

Application of zoning regulation to radio or television facilities. 81 A.L.R.3d 1086.

Construction and application of zoning regulations in connection with funeral homes. 92 A.L.R.3d 328.

Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans, and the like, in residential neighborhoods. 95 A.L.R.3d 378.

Zoning regulations in relation to cemeteries. 96 A.L.R.3d 921.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys. 100 A.L.R.3d 252.

Halfway houses: housing facilities for former patients of mental hospital as violating zoning restrictions. 100 A.L.R.3d 876.

Zoning regulations prohibiting or limiting fences, hedges, or walls. 1 A.L.R.4th 373.

Validity of "war zone" ordinances restricting location of sex-oriented businesses. 1 A.L.R.4th 1297.

Validity of ordinance restricting number of unrelated persons who can live together in residential zone. 12 A.L.R.4th 238.

Eminent domain: public taking of sports or entertainment franchise or organization as taking for public purpose. 30 A.L.R.4th 1226.

Zoning: occupation of less than all dwelling units as discontinuance or abandonment of multifamily dwelling nonconforming use. 40 A.L.R.4th 1012.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for residential purposes. 54 A.L.R.4th 1034.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for business or commercial purposes. 60 A.L.R.4th 907.

Addition of another activity to existing nonconforming use as violation of zoning ordinance. 61 A.L.R.4th 724.

Change in volume, intensity, or means of performing nonconforming use as violation of zoning ordinance. 61 A.L.R.4th 806.

Change in type of activity of nonconforming use as violation of zoning ordinance. 61 A.L.R.4th 902.

Zoning: residential off-street parking requirements. 71 A.L.R.4th 529.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence. 87 A.L.R.4th 294.

Validity of zoning laws setting minimum lot size requirements. 1 A.L.R.5th 622.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations. 38 A.L.R.5th 357.

Activities in preparation for building as establishing valid nonconforming use or vested right to engage in construction for intended use. 38 A.L.R.5th 737.

Application of state and local construction and building regulations to contractors engaged in construction projects for the federal government. 131 A.L.R. Fed. 583.

Am Jur. 13 Am. Jur. 2d, Buildings §§ 1-11.

26 Am. Jur. 2d, Eminent Domain § 73.

83 Am. Jur. 2d, Zoning and Planning §§ 1-53, 119.

16 Am. Jur. Trials, Introduction to Zoning §§ 7-13.

8 Am. Jur. Proof of Facts 2d, Unreasonableness of Zoning Restriction, §§ 7 et seq. (proof of unreasonableness of residential zoning restriction).

CJS. 101A C.J.S., Zoning and Land Planning §§ 1-78.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

Historic Preservation of the Zoning Power: A Mississippi Perspective. 50 Miss. L. J. 533, September 1979.

§ 17-1-5. Manner of exercise of powers conferred.

Except as otherwise provided in Article VII of the Chickasaw Trail Economic Development Compact described in Section 57-36-1, in the exercise and enforcement of the powers conferred by Sections 17-1-1 through 17-1-27, inclusive, each county and each municipality within the county may act independently one from the other, or, in the exercise of discretion, the governing authority of any county and the governing authority of any municipality located within the county may act jointly in order to attain uniformity and consistency in the zoning regulations for the areas to be affected.

SOURCES: Codes, 1930, § 2474; 1942, §§ 2890.5, 3590; Laws, 1926, ch. 308; Laws, 1938, ch. 333; Laws, 1946, ch. 292; Laws, 1956, ch. 197 §§ 1-6; Laws, 1958, chs. 520, 532; Laws, 1960, ch. 402; Laws, 1998, ch. 553, § 4, eff from and after July 1, 1998.

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Cross References — Planning commission's plan for area development, see § 17-1-11.

Conditions when local regulations govern, see § 17-1-21.

Board of supervisors' requiring utilities and streets in subdivisions, see § 17-1-23.

Board of supervisors' approval before recording subdivision plat, see § 17-1-23.

Penalties for violations of zoning ordinances, see § 17-1-27.

Membership of regional planning commissions, see § 17-1-29.

Scope of regional planning commissions' advisory role in planning matters, see § 17-1-33.

Authority and powers of regional planning commissions, see § 17-1-35.

Creation of housing authorities by governing authorities of town, city, or county, see § 43-33-5.

Housing projects of an authority being subjected to zoning ordinances and regulations, see § 43-33-21.

Special zoning regulations concerning airports, see §§ 61-7-1 et seq.

Establishing zones within which sale of wine and beer may be prohibited, see § 67-3-65.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.
3. Residential areas.
4. Commercial areas.
5. Rezoning.
6. Judicial review.

1. In general.

A zoning action taken by a mayor and board of aldermen was not ineffective as a result of its being labeled "resolution" instead of "ordinance." Luter v. Hammon, 529 So. 2d 625 (Miss. 1988).

The procedural rules and regulations found in a city's zoning ordinance are in aid of the city's performance of its legislative zoning function, and it is the city which is vested with the final authority for determining whether its procedural requisites have been met or, if it pleases, waiving them, with 2 exceptions, one of which concerns those cases wherein the municipal zoning authorities may have said to have transgressed some important limitation or procedure imposed by state law, and the other appears where the procedural deficiencies may have said to contravened a citizen's due process rights. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

After a city has adopted a comprehensive zoning ordinance, an amendment to such ordinance depends primarily upon a re-evaluation of the change to the general welfare of the municipality as a whole. Blacklidge v. City of Gulfport, 223 So. 2d 530 (Miss. 1969).

A zoning ordinance will not be set aside if its validity is fairly debatable but only if its invalidity is clear. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

Refusal to rezone will be upheld if not wholly unreasonable or an abuse of discretion without any reasonably probable basis in the evidence. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

Under this section [Code 1942, § 2890.5] a county board of supervisors may act in conjunction with municipalities located in the county, or independently. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

1953 zoning ordinances enacted by the city of Tupelo were invalid where the minutes of the mayor and board of aldermen for the period in which the ordinance was enacted were not signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Zoning statute held valid. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

2. Construction and application.

Under modern day conditions any plan for the development of land must reckon with the parking problem, particularly in heavily populated areas, so that off-street parking regulations come within the delegation of zoning power to the city, and the city has the power to make reasonable regulations to prevent street congestion. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

In an action to enjoin the use of defendant's house as a beauty parlor, allegedly in violation of a protective covenant, it was no defense that the plaintiffs had not exhausted their administrative remedies in that they had not followed their prior objection to the defendant's successful application to the county board of supervisors for a use permit to its ultimate disposition, since the litigation arose from personal rights derived from a protective covenant, and a county board of supervisors is without authority, by the issuance of a use permit, to change or alter a solemn personal contract with regard to the use of land. Sullivan v. McCallum, 231 So. 2d 801 (Miss. 1970).

Where a zoning ordinance prohibited the operation of a filling station in a local business zone, and the store proprietor's application for a permit disclosed his knowledge that property was in such zone, an ordinance would not be invalidated merely because the valid zoning use map referred to in the ordinance had been filed away following the enactment of a later, and supposedly valid, zoning ordinance. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Under city zoning ordinances providing for the continued use of property in the manner it was being used at the time of the ordinance, and also providing that such use might be extended throughout the building if no structural alterations were made, except as required by law, and defining structural alterations as any change in supporting members of a building, such as bearing walls, columns, beams or girders, the mayor and board of aldermen were not warranted in designating as a mere variation the proposed additions to a storehouse building, which would have resulted in the building being approximately one and seven-tenths times as large as the existing building. Mayor & Bd. of Aldermen v. White, 230 Miss. 698, 93 So. 2d 852 (1957).

The construction and maintenance of a warehouse for the reception of freight on railroad right-of-way, which had existed as such for more than 50 years prior to the adoption of an ordinance making most of such right-of-way a residential district, held to be a reasonable use of such right-of-way in facilitating the company's principal business and no more objectionable than the operation of trains, and to be authorized by provision of ordinance excepting existing nonconforming uses; and, accordingly, action of city authorities in denying such use of the property was an unreasonable and arbitrary interpretation of the ordinance which tended to deprive the company of its property and use thereof in violation of both Federal and State Constitutions. Jones v. City of Hattiesburg, 207 Miss. 491, 42 So. 2d 717 (1949).

3. Residential areas.

Where there was a blind institution, church, hospital, and guest house in neighborhood, but all adjacent property in one direction was occupied by residences, property held properly placed within residential zone. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

4. Commercial areas.

Where during the year and a half between the adoption of a comprehensive zoning ordinance and a rezoning ordinance, the streets and alleys in a tract had been closed, a branch of a national bank had been established and a large discount house had relocated in the vicinity, and the new store which had been constructed could become part of an all weather regional shopping mall if the tract were rezoned commercial, such changes considered together were sufficient to justify the rezoning of the tract from residential to commercial. Currie v. Ryan, 243 So. 2d 48 (Miss. 1970).

Property owners were not entitled as a matter of law to a rezoning of their property from residential to commercial even if the record revealed a material change in circumstances since the Supreme Court ruled on a zoning case in 1966, which case involved the same property. City of Jackson v. Gaddy, 241 So. 2d 364 (Miss. 1970).

5. Rezoning.

The Supreme Court will not substitute its judgment for that of the municipal zoning authorities unless the rezoning decision clearly is arbitrary, capricious and wholly unreasonable. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

Upon evidence establishing the change and public need requirements of the rule that, absent mistake in the original zoning, reclassification may be had only where there has been change in the character of the neighborhood such an extent as to justify the rezoning, coupled with a public need for rezoning, the Supreme Court would defer to the judgment of the municipal zoning authorities in rezoning from single family residential use to a special use recreation district of a 50-acre tract of land located in a flood plain. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

While as a general rule zoning authorities may not impose conditions and limitations in an order rezoning property, a provision requiring that before a permit could be issued to construct buildings on certain property, adequate off-street parking must be provided for, did not invalidate the order. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

The rezoning of a tract from residential to general commercial, was not arbitrary, capricious, discriminatory, illegal, or without substantial evidential basis, where the tract was bounded on two sides by property zoned commercial, on a third side by a highway, and on the fourth side by 20 acres of vacant property. Currie v. Ryan, 243 So. 2d 48 (Miss. 1970).

Refusal to rezone as commercial eight acres of property within a residential zone is justified when it is immediately across the street from a hospital and is bound on three sides by expensive homes, and bounding streets are not direct arteries and not of sufficient width to handle increased traffic. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

6. Judicial review.

Decision of city fathers in drawing and maintaining line past which commercial development would not be allowed was not arbitrary, capricious, or unreasonable, where there was substantial evidence supporting both sides of rezoning application, thus making ultimate decision fairly debatable; same reasoning applied to denial of assertion that zoning restriction amounted to confiscatory taking in violation of due process of law under constitution because that issue is intertwined with review of whether zoning decision is arbitrary, capricious, or unreasonable. Saunders v. City of Jackson, 511 So. 2d 902 (Miss. 1987).

Zoning is a legislative matter and the courts will not interfere or substitute their judgment, but will limit their reviews to whether the zoning was reasonable, arbitrary, discretionary, confiscatory, or an abuse of discretion. Blacklidge v. City of Gulfport, 223 So. 2d 530 (Miss. 1969).

Courts cannot interfere unless action of city commissioners in placing certain property in residential zone was unreasonable and arbitrary. City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932).

Where ordinance designated property as residential property, and question was doubtful, court would not interfere by mandamus to compel issuance of building permit. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

ATTORNEY GENERAL OPINIONS

Since a county has no authority to exercise general zoning, planning, and subdivision powers in an incorporated area of the county outside of any municipality, a county has no authority to exercise such powers jointly with a village pursuant to the statute. Buntin, June 5, 1998, A.G. Op. #98-0280.

Where a county and an incorporated city or town determine to jointly exercise their zoning, planning, and subdivision powers pursuant to the statute, they may, but need not, enter into an interlocal agreement for this purpose. Buntin, June 5, 1998, A.G. Op. #98-0280.

RESEARCH REFERENCES

ALR. Garage as part of house with which it is physically connected within zoning regulations or restrictive covenant. 7 A.L.R.2d 593.

Zoning based on size of commercial or industrial enterprises or units. 7 A.L.R.2d 1007.

Validity of building height regulations. 8 A.L.R.2d 963.

Exclusion from municipality of industrial activities inconsistent with residential character. 9 A.L.R.2d 683.

Zoning: change in ownership of nonconforming business or use as affecting right to continuance thereof. 9 A.L.R.2d 1039.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 A.L.R.2d 551.

Violation of zoning ordinance or regulation as affecting or creating liability for injuries or death. 31 A.L.R.2d 1469.

Remedies to compel municipal officials to enforce zoning regulations. 35 A.L.R.2d 1135.

Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property. 37 A.L.R.2d 1143.

Validity of zoning regulation prohibiting residential use in industrial district. 38 A.L.R.2d 1141.

Validity of zoning regulations, with respect to uncertainty and indefiniteness of district boundary lines. 39 A.L.R.2d 766.

What zoning regulations are applicable to territory annexed to a municipality. 41 A.L.R.2d 1463.

Right to intervene in court review of zoning proceeding. 46 A.L.R.2d 1059.

Spot zoning. 51 A.L.R.2d 263.

What is a "club" or "clubhouse" within provisions of zoning regulations. 52 A.L.R.2d 1098.

Attack on validity of zoning statute, ordinance, or regulation on ground of improper delegation of authority to board or officer. 58 A.L.R.2d 1083.

Applicability of zoning regulations to governmental activities. 61 A.L.R.2d 970.

What is lodginghouse or boardinghouse within provisions of zoning ordinance or regulation. 64 A.L.R.2d 1167.

Motive of members of municipal authority approving or adopting zoning ordinance or regulation as affecting its validity. 71 A.L.R.2d 568.

What constitutes "home occupation" or the like within accessory use provision of zoning regulation. 73 A.L.R.2d 439.

Zoning regulations as to gasoline filling stations. 75 A.L.R.2d 168.

Zoning regulations as to shopping centers. 76 A.L.R.2d 1172.

Zoning regulations as applied to dancing-schools. 85 A.L.R.2d 1150.

Zoning: changes, repairs, or replacements in continuation of nonconforming use. 87 A.L.R.2d 4.

Validity of front setback provisions in zoning ordinance or regulation. 93 A.L.R.2d 1223.

Construction of front setback provisions in zoning ordinance or regulation. 93 A.L.R.2d 1244.

Validity of zoning regulations requiring open side or rear yards. 94 A.L.R.2d 398.

Construction of zoning regulations requiring side or rear yards. 94 A.L.R.2d 419.

Construction of zoning regulations prescribing minimum area for house lots or requiring an area proportionate to number of families to be housed. 95 A.L.R.2d 761.

Use of trailer or similar structure for residence purposes as within limitation of restrictive covenant, zoning provision, or building regulation. 96 A.L.R.2d 232.

Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation. 96 A.L.R.2d 449.

Validity and construction of zoning regulations prescribing a minimum width or frontage for residence lots. 96 A.L.R.2d 1367.

Validity and construction of zoning regulations prescribing minimum floorspace or cubic content of residence. 96 A.L.R.2d 1409.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations. 97 A.L.R.2d 702.

Application of zoning requirements to research and laboratory facilities. 98 A.L.R.2d 225.

Imposing restriction as to hours or days of operation of business as condition of allowance of special zoning exception or variance. 99 A.L.R.2d 227.

Validity, construction, and effect of zoning regulations as regards "garden-type apartments" and "row housing". 99 A.L.R.2d 873.

Construction and application of zoning regulation in connection with bomb or fallout shelters. 7 A.L.R.3d 1443.

Zoning as a factor in determination of damages in eminent domain. 9 A.L.R.3d 291.

Disqualification for bias or interest of administrative officer sitting in zoning proceedings. 10 A.L.R.3d 694.

Aesthetic objectives or consideration as affecting validity of zoning ordinance. 21 A.L.R.3d 1222.

Application of zoning regulations to golf courses, swimming pools, tennis courts, or the like. 32 A.L.R.3d 424.

Zoning or other public restrictions on the use of property as affecting rights and remedies of parties to contract for the sale thereof. 39 A.L.R.3d 362.

Requirement that zoning variances or exceptions be made in accordance with comprehensive plan. 40 A.L.R.3d 372.

Zoning: right to resume nonconforming use of premises after involuntary break in the continuity of nonconforming use caused by governmental activity. 56 A.L.R.3d 138.

What constitutes "church", "religious use," or the like within ordinance. 62 A.L.R.3d 197.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education. 64 A.L.R.3d 1138.

Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.

Zoning regulations prohibiting or limiting fences, hedges, or walls. 1 A.L.R.4th 373.

Validity of zoning laws setting minimum lot size requirements. 1 A.L.R.5th 622.

Validity of provisions for amortization of nonconforming uses. 8 A.L.R.5th 391.

Determination whether zoning or rezoning of particular parcel constitutes illegal spot zoning. 73 A.L.R.5th 223.

What is "mobile home," "house trailer," "trailer house," or "trailer" within meaning of restrictive covenant. 83 A.L.R.5th 651.

Am Jur. 13 Am. Jur. 2d, Buildings §§ 1 et seq.

26 Am. Jur. 2d, Eminent Domain § 73.

83 Am. Jur. 2d, Zoning and Planning §§ 59-257.

25 Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Forms 1 et seq. (issuance of building permit or approval of plat).

20A Am. Jur. Legal Forms 2d, Zoning and Planning, §§ 268:31 et seq. (forms of zoning resolutions and ordinances).

CJS. 101A C.J.S., Zoning and Land Planning, §§ 10-14, 16, 81-93.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

§ 17-1-7. Zones.

Except as otherwise provided in Article VII of the Chickasaw Trail Economic Development Compact described in Section 57-36-1, for the purposes set forth in Section 17-1-3, the governing authority of each municipality and county may divide the municipality or county into zones of such number, shape and area as may be deemed best suited to carry out the purposes of Sections 17-1-1 through 17-1-27, inclusive. Within the zones created, the governing authority of each municipality and county may, subject to the restrictions with respect to agricultural lands and farm buildings or structures as set out in Section 17-1-3, regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All regulations shall be uniform for each class or kind of buildings throughout each zone, but regulations in one zone may differ from those in other zones.

SOURCES: Codes, 1930, § 2475; 1942, § 3591; Laws, 1926, ch. 308; Laws, 1998, ch. 553, § 5, eff from and after July 1, 1998.

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Cross References — County acting with municipalities located within it, see § 17-1-5.

Planning commission's plan for area development, see § 17-1-11.

Board of supervisors' approval before recording subdivision plat, see § 17-1-23.

Board of supervisors' requiring utilities and streets in subdivisions, see § 17-1-23.

Gulf Regional District Commission as planner for counties and cities, see § 17-11-31.

JUDICIAL DECISIONS

1. In general.

Zoning may restrict methods of construction and repair of buildings, provided the zoning ordinance is in accordance with a comprehensive plan pertaining to the use of land. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

ATTORNEY GENERAL OPINIONS

A municipality may adopt an ordinance limiting the number of trailers per lot and, in so doing, enact a zoning ordinance regulating and restricting the erection, construction, alteration, repair or use of buildings, structures or land; if the governing authorities desire to adopt such an ordinance, they should do so as part of a comprehensive plan and follow the necessary statutory procedures for same. James, January 30, 1998, A.G. Op. #98-0016.

RESEARCH REFERENCES

ALR. Access to industrial, commercial, or business premises over premises differently zoned. 63 A.L.R.2d 1446.

Validity and construction of zoning ordinance regulating architectural style or design of structure. 41 A.L.R.3d 1397.

Construction and application of terms “agricultural,” “farm,” “farming,” or the like, in zoning regulations. 38 A.L.R.5th 357.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 89 et seq.

5 Am. Jur. Proof of Facts, Fraud, Proof No. 1 (misrepresentation regarding laws governing use of property, pp 370-374).

8 Am. Jur. Proof of Facts 2d, Unreasonableness of Zoning Restriction, §§ 7 et seq. (proof of unreasonableness of residential zoning restriction).

CJS. 101A C.J.S., Zoning and Land Planning §§ 40, 118-149.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

§ 17-1-9. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings, and encouraging the most appropriate use of land throughout such municipality.

SOURCES: Codes, 1930, § 2476; 1942, § 3592; Laws, 1926, ch. 308.

Cross References — Planning commission’s plan for area development, see § 17-1-11.

Scope of regional planning commissions’ advisory role in planning matters, see § 17-1-33.

Zoning ordinances relating to factory manufactured movable homes, see § 17-1-39.

Housing projects being subjected to zoning ordinances and regulations, see § 43-33-21.

Special zoning regulations concerning airports, see §§ 61-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

Record revealed that the city's comprehensive plan was not amended to comply with the rezoning of a portion of the neighborhood from RB property to R1A property, and at the hearing, the city admitted that the comprehensive plan was not amended to comply with the zoning change, however, the city maintained that it would amend the comprehensive plan if the zoning change was permitted; Miss. Code Ann. §§ 17-1-11, 17-1-15, and 17-1-17 contemplated necessary amendments to comprehensive plans and zoning ordinances, and the trial court did not err by finding that the rezoning was compatible with the comprehensive plan. Bridge v. Mayor & Bd. of Aldermen of Oxford, 995 So. 2d 81 (Miss. 2008).

District court found a part of an ordinance intended to regulate businesses providing nude exotic dancing but that restricted other sexual conduct was both overbroad and in conflict with other parts of the ordinance; time periods in the statute were also in need of amendment, and it was required to be adopted as part of a comprehensive plan. Freelance Entm't, LLC v. Sanders, 280 F. Supp. 2d 533 (N.D. Miss. 2003).

Zoning may restrict methods of construction and repair of buildings, provided the zoning ordinance is in accordance with a comprehensive plan pertaining to the use of land. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

A permit to erect a structure which conforms to building regulations cannot be denied because of proposed use, where not zoned against such use. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

Since filling stations involve highly inflammable commodities and affect the flow and hazards of traffic, a zoning ordinance which prohibited gasoline filling stations in all areas except in industrial zones was not invalid as applied by the city authorities in their denial of a permit to a property owner to construct a filling station in an area zoned for local business. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Although if timely attack had been made upon the zoning ordinance, the court would have had to hold it void since the municipal authorities failed to follow the statutory procedure, where the ordinance had been amended 32 times since taking effect in 1940, the population of the city had more than doubled in that time, 7,100 permits, representing millions of dollars in expenditures, had been issued under the ordinance, and the appellants, who were attacking the ordinance, had obtained permits and licenses thereunder, the ordinance would be upheld. Walker v. City of Biloxi, 229 Miss. 890, 92 So. 2d 227 (1957).

A zoning ordinance was void where the adoption of a comprehensive plan therefor setting forth either specifically or substantially the character of the zoning ordinance which the governing authority intended to adopt was not adopted until after the publication of the notice to the public. Morris v. City of Columbia, 184 Miss. 342, 186 So. 292 (1939).

These sections require the governing authorities of a municipality, before publishing notice to the citizens of their intention to adopt a zoning ordinance, to adopt a comprehensive plan therefor setting forth either specifically or substantially the character of the zoning ordinance which they intended to adopt so that the citizens may know exactly what is intended to be done and be able to express an intelligent opinion thereon; and where this was not done until the ordinance was adopted, the ordinance was void. Morris v. City of Columbia, 184 Miss. 342, 186 So. 292 (1939).

RESEARCH REFERENCES

ALR. Motive of members of municipal authority approving or adopting zoning ordinance or regulation as affecting its validity. 71 A.L.R.2d 568.

Validity of municipality's ban on construction until public facilities comply with specific standards. 92 A.L.R.3d 1073.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 59 et seq.

CJS. 101A C.J.S., Zoning and Land Planning § 3.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

Historic Preservation of the Zoning Power: A Mississippi Perspective. 50 Miss. L. J. 533, September 1979.

§ 17-1-11. Official plan; local planning commission.

(1)(a) The governing authority of each municipality and county may provide for the preparation, adoption, amendment, extension and carrying out of a comprehensive plan for the purpose of bringing about coordinated physical development in accordance with present and future needs and may create, independently or jointly, a local planning commission with authority to prepare and propose (a) a comprehensive plan of physical development of the municipality or county; (b) a proposed zoning ordinance and map; (c) regulations governing subdivisions of land; (d) building or set back lines on streets, roads and highways; and (e) recommendations to the governing authorities of each municipality or county with regard to the enforcement of and amendments to the comprehensive plan, zoning ordinance, subdivision regulations and capital improvements program. The governing authority of each municipality and county may, in its discretion, pay to each member of a planning commission a per diem in an amount as determined by such governing authority for each day, or portion thereof, spent in the performance of his duties; however, no member of a planning commission may be paid more than One Hundred Twenty Dollars ($120.00) in the aggregate per month.

(b) The definition of "comprehensive plan" set forth in paragraph (c) of Section 17-1-1 shall not be construed to affect, or to require the amendment of, any plan adopted by a county or municipality prior to July 1, 1988, which plan does not specifically conform to the minimum elements of a comprehensive plan required in such definition.

(2) The governing authority of each municipality and county may adopt, amend and enforce the comprehensive plan, zoning ordinance, subdivision regulations and capital improvements program as recommended by the local planning commission after a public hearing thereon as provided by Section 17-1-15.

(3) In the performance of its duties, the local planning commission may cooperate with, contract with, or accept funds from federal, state or local agencies or private individuals or corporations and may expend such funds and carry out such cooperative undertakings and contracts.

(4) Any comprehensive plan established under this section shall not contain any provision which conflicts with Article VII of the Chickasaw Trail Economic Development compact described in Section 57-36-1.

SOURCES: Codes, 1942, § 2890.5; Laws, 1956, ch. 197, §§ 1-6; Laws, 1960, ch. 402; Laws, 1981, ch. 434, § 1; Laws, 1988, ch. 443; Laws, 1988, ch. 483, § 2; Laws, 1990, ch. 311, § 1; Laws, 1998, ch. 489, § 1; Laws, 1998, ch. 553, § 6, eff from and after July 1, 1998.

Joint Legislative Committee Note — Section 1 of ch. 489, Laws, 1998, effective July 1, 1998 (approved March 26, 1998), amended this section. Section 6 of ch. 553, Laws, 1998, effective July 1, 1998 (approved April 14, 1998), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 553, Laws, 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Cross References — County acting with municipalities located within it, see § 17-1-5.

Subdivision regulation by governing authorities, see § 17-1-23.

Scope of regional planning commissions' advisory role in planning matters, see § 17-1-33.

Association of local communities and counties to solve common pro blems, see §§ 17-11-1 et seq.

Special zoning regulations concerning airports, see §§ 61-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

Record revealed that the city's comprehensive plan was not amended to comply with the rezoning of a portion of the neighborhood from RB property to R1A property, and at the hearing, the city admitted that the comprehensive plan was not amended to comply with the zoning change, however, the city maintained that it would amend the comprehensive plan if the zoning change was permitted; Miss. Code Ann. §§ 17-1-11, 17-1-15, and 17-1-17 contemplated necessary amendments to comprehensive plans and zoning ordinances, and the trial court did not err by finding that the rezoning was compatible with the comprehensive plan. Bridge v. Mayor & Bd. of Aldermen of Oxford, 995 So. 2d 81 (Miss. 2008).

Decision of a mayor and board of aldermen to re-zone a parcel of land was fairly debatable and supported by substantial evidence, so the decision to re-zone could not be arbitrary and capricious; the mayor and board adopted findings of fact in motion to re-zone, and with such findings of fact enumerated in the record, the court was not required to reverse the decision. Adams v. Mayor & Bd. of Aldermen, 964 So. 2d 629 (Miss. Ct. App. 2007).

The failure of a city to maintain an official zoning map does not warrant voiding an otherwise valid zoning. Luter v. Hammon, 529 So. 2d 625 (Miss. 1988).

Finding of city council that there was public need for, and a change in neighborhood justifying, rezoning from residential to commercial of a parcel into which a shopping mall wished to expand, was not arbitrary or capricious where in its determinative process the council looked at increased population growth, revitalization of the downtown central business district, increased commercial activity, comprehensive planning, change in economic character, deterioration, and buyer's trend. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

Adoption by each municipality of a comprehensive zoning plan designed to bring about coordinated physical development of the community, consistent with its present and future needs, is contemplated by §§ 17-1-11(1) and 17-1-3, under which the comprehensive plan contemplates a dynamic community, recognizes the inevitability of change, and balances the community's gross needs and the individual's interest in using his property as he sees fit. Woodland Hills Conservation Ass'n v. City of Jackson, 443 So. 2d 1173 (Miss. 1983).

In an action to enjoin the use of defendant's house as a beauty parlor, allegedly in violation of a protective covenant, it was no defense that the plaintiffs had not exhausted their administrative remedies in that they had not followed their prior objection to the defendant's successful application to the county board of supervisors for a use permit to its ultimate disposition, since the litigation arose from personal rights derived from a protective covenant, and a county board of supervisors is without authority, by the issuance of a use permit, to change or alter a solemn personal contract with regard to the use of land. Sullivan v. McCallum, 231 So. 2d 801 (Miss. 1970).

Under this section [Code 1942, § 2890.5] a county board of supervisors may act in conjunction with municipalities located in the county, or independently. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities have discretionary authority to require that members of a municipal planning commission and/or any standing committees thereof be residents of the municipality; municipal citizens must be appointed if an advisory committee is utilized in lieu of a planning commission. Ringer, Feb. 20, 1992, A.G. Op. #92-0053.

Quorum of City Planning Board consists of a majority of board membership; when vacancy exists, eight of fifteen members are required for quorum to elect successor. O'Reilly-Evans, Oct. 7, 1992, A.G. Op. #92-0742.

A municipality may adopt an ordinance limiting the number of trailers per lot and, in so doing, enact a zoning ordinance regulating and restricting the erection, construction, alteration, repair or use of buildings, structures or land; if the governing authorities desire to adopt such an ordinance, they should do so as part of a comprehensive plan and follow the necessary statutory procedures for same. James, January 30, 1998, A.G. Op. #98-0016.

A municipality may adopt an ordinance limiting the number of trailers per lot and, in so doing, enact a zoning ordinance regulating and restricting the erection, construction, alteration, repair or use of buildings, structures or land; however, where the governing authorities desire to adopt such an ordinance, they should do so as part of a comprehensive plan and follow the necessary statutory procedures for the plan. Larkin, February 5, 1999, A.G. Op. #99-0044.

A county, in creating a county planning commission, has the authority to limit members on its commission to persons who either reside in or own property in unincorporated areas of the county, or in areas affected by the ordinance. Griffin, June 2, 2006, A.G. Op. 06-0223.

A county may establish a planning commission made up solely of residents of the county who own property or reside in the county, but do not own property or reside in a municipality of the county. Clarke, July 25, 2006, A.G. Op. 06-0297.

RESEARCH REFERENCES

ALR. Zoning regulations as applied to dancing schools. 85 A.L.R.2d 1150.

Construction and application of zoning regulations in connection with bomb or fallout shelters. 7 A.L.R.3d 1443.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 59 et seq., 227 et seq.

16 Am. Jur. Trials, Public Hearing before Zoning Commission §§ 41-52.

24 Am. Jur. Proof of Facts 3d 543, Zoning-Invalidity of Single-Family Zoning Ordinance.

CJS. 101A C.J.S., Zoning and Land Planning §§ 211-217.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

§ 17-1-13. Utilization of services of planning commissions, engineering departments or advisory committee.

The governing authority of each county or municipality may, in order to more effectively carry out its requisite zoning and planning activities, utilize the services of any appropriate local or regional planning commission, and it may consider, act upon or otherwise make use of the suggestions, proposals or recommendations of any such appropriate local or regional planning commission. Also, in carrying out its zoning and planning duties, the governing authority of each county and municipality may utilize the services of any appropriate municipal or county engineering department or the services of an advisory committee of citizens of such number as may be deemed appropriate to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. A preliminary report may be made, and public hearings thereon before submitting its final report, may be had.

SOURCES: Codes, 1930 § 2479; 1942, § 3595; Laws, 1926, ch. 308.

Cross References — Planning commission's plan for area development, see § 17-1-11.

Scope of regional planning commissions' advisory role in planning matters, see § 17-1-33.

Gulf Regional District's conducting feasibility study of projects, see § 17-11-27.

JUDICIAL DECISIONS

1. In general.

A city commission is not bound by the recommendation of its zoning board of review upon substantial evidence that certain property be rezoned. Sanderson v. City of Hattiesburg, 249 Miss. 656, 163 So. 2d 739 (1964).

RESEARCH REFERENCES

ALR. What constitutes accessory or incidental use of religious or education property within zoning ordinance. 11 A.L.R.4th 1084.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

§ 17-1-15. Procedure for establishing, amending, etc., of regulations, zone boundaries, etc.; notice and hearing.

The governing authority of each municipality and county shall provide for the manner in which the comprehensive plan, zoning ordinance (including the official zoning map) subdivision regulations and capital improvements program shall be determined, established and enforced, and from time to time, amended, supplemented or changed. However, no such plan, ordinance (including zoning boundaries), regulations or program shall become effective until after a public hearing, in relation thereto, at which parties in interest, and citizens, shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality or county.

SOURCES: Codes, 1930, § 2477; 1942, § 3593; Laws, 1926, ch. 308; Laws, 1988, ch. 483, § 3, eff from and after July 1, 1988.

Cross References — Adopting, amending and enforcing official plans of local planning commission, see § 17-1-11.

JUDICIAL DECISIONS

1. In general.
2. Establishment and amendment of regulations and restrictions.
3. —Public hearing.
4. —Notice of hearing.
5. Enforcement of regulations and restrictions.
6. Judicial review.

1. In general.

Record revealed that the city's comprehensive plan was not amended to comply with the rezoning of a portion of the neighborhood from RB property to R1A property, and at the hearing, the city admitted that the comprehensive plan was not amended to comply with the zoning change, however, the city maintained that it would amend the comprehensive plan if the zoning change was permitted; Miss. Code Ann. §§ 17-1-11, 17-1-15, and 17-1-17 contemplated necessary amendments to comprehensive plans and zoning ordinances, and the trial court did not err by finding that the rezoning was compatible with the comprehensive plan. Bridge v. Mayor & Bd. of Aldermen of Oxford, 995 So. 2d 81 (Miss. 2008).

The fact that a town initiated the rezoning of a parcel did not render it arbitrary and capricious as a governing authority of a municipality may amend, supplement, or change zoning ordinances provided that there is a properly noticed hearing. Town of Florence v. Sea Lands, Ltd., 759 So. 2d 1221 (Miss. 2000).

A property owner's claim of ownership under color of title by virtue of his adverse possession of the property after he purchased the property at a tax sale but before the redemption period had ended and he had the right of possession, was sufficient to apply the "doctrine of relation" back to the date of the tax sale purchase for the purpose of challenging a subsequent zoning ordinance by asserting a pre-existing nonconforming use. In the balancing of public benefit against private property losses, a landowner's constitutional right under the due process clause prevails. Barrett v. Hinds County, 545 So. 2d 734 (Miss. 1989).

Amendment of city zoning ordinance was improper where neither real estate developer nor city produced evidence to support amendment, because of firmly established rule that before zoning board reclassifies property from one zone to another, there must be proof either (1) that there was mistake in original zoning or (2) that character of neighborhood had changed to extent to justify reclassification, and that there was public need for rezoning. Board of Aldermen v. Conerly, 509 So. 2d 877 (Miss. 1987).

All presumptions must be indulged in favor of the validity of the zoning ordinances. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

A zoning map may be incorporated in a zoning ordinance by reference; and the statutes in force in 1946 did not provide for a method of verifying such a map. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

2. Establishment and amendment of regulations and restrictions.

In a very limited way, a common carrier railroad may be subject to local zoning regulations. Thus, a county board of supervisors had the statutory authority to adopt a zoning ordinance restricting use by a railroad of property owned by it when the ordinance was adopted. Columbus & G. Ry. v. Scales, 578 So. 2d 275 (Miss. 1991).

Local ordinance providing that annexed land shall automatically be zoned for single family residences was subject to notice and hearing requirements of this section, and failure to comply with statutory requirements meant that the classification was not binding on petitioners seeking to change the classification. Gatlin v. City of Laurel, 312 So. 2d 435 (Miss. 1975).

Where a void ordinance directed the city engineer to note on the municipal map certain church property as commercial property, thereby injuring the value of nearby residential property, the city will be enjoined from classifying on its municipal zoning map the church property as commercial property. Brooks v. City of Jackson, 211 Miss. 246, 51 So. 2d 274 (1951).

Order of Mayor and Board of Aldermen, reciting unauthorized alteration of Use District Map which was a part of a proposed zoning ordinance, and ordering deletion of the alteration and restoration of the map to its original condition, was not an amendment requiring a new publication. Arkansas Fuel Oil Co. v. City of Oxford, 188 Miss. 455, 195 So. 316 (1940).

3. —Public hearing.

Although City's zoning ordinance regarding "agreement zoning" upon annexation apparently complies with requirements of § 17-1-15, notice and hearing requirements of ordinance itself were not followed by City, and agreed zoning classification of property in question is consequently not binding; however, violations of ordinance and State statute did not deprive plaintiff landowner of federal constitutional right to due process. Smith v. City of Picayune, 795 F.2d 482 (5th Cir. 1986).

The right of other landowners to notice and hearing of an application for re-zoning is not violated by making an order which re-zones only a part of the property described in the notice of application. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

4. —Notice of hearing.

Although City's zoning ordinance regarding "agreement zoning" upon annexation apparently complies with requirements of § 17-1-15, notice and hearing requirements of ordinance itself were not followed by City, and agreed zoning classification of property in question is consequently not binding; however, violations of ordinance and State statute did not deprive plaintiff landowner of federal constitutional right to due process. Smith v. City of Picayune, 795 F.2d 482 (5th Cir. 1986).

Where board of supervisors published a notice of hearing concerning a proposed plan of new zoning and subdivision regulations on March 7, and held the public hearing on March 20, the number of days elapsed totaled only 14, and the notice and hearing were inadequate as a matter of law, and as applied against plaintiff's property, the zoning was void for statutory non-compliance. Pyramid Corp. v. DeSoto County Bd. of Supvrs., 366 F. Supp. 1299 (N.D. Miss. 1973).

Where there was an application for rezoning and the notice of a public hearing was silent as to the name of the municipality in which the hearing was to be held, and as to the place in such municipality where the hearing was to be held, the notice was fatally defective and the ordinance attempted to be adopted was void. Brooks v. City of Jackson, 211 Miss. 246, 51 So. 2d 274 (1951).

Publication of notice of adoption of municipal zoning ordinance was not insufficient or ineffective because of failure to reproduce therein Use District Map referred to in such ordinance, where such reproduction was not necessary. Arkansas Fuel Oil Co. v. City of Oxford, 188 Miss. 455, 195 So. 316 (1940).

A zoning ordinance was void where the notice to the public was published before the adoption of a comprehensive plan therefor, setting forth either specifically or substantially the character of the zoning ordinance which the governing authority intended to adopt. Morris v. City of Columbia, 184 Miss. 342, 186 So. 292 (1939).

5. Enforcement of regulations and restrictions.

The mere fact that some persons have been permitted by the city authorities to violate a zoning regulation does not preclude its enforcement against another violator. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

One cannot assert that a zoning ordinance is inoperative as to him because the map to which it refers has been misplaced, where he is aware of how his property is zoned. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

6. Judicial review.

The zoning decision of a local governing body, which appears to be fairly debatable, will not be disturbed on appeal, and will be set aside only if it clearly appears that the decision is arbitrary, capricious, discriminatory, illegal, or is not supported by substantial evidence. A city zoning board's decision to allow a change in zoning for a piece of property from residential to commercial was fairly debatable where the board determined that the subject lot had absolutely no use for residential development and the city had a sincere interest in seeing a commercial establishment built on the site; the presentation of contradictory evidence only confirmed the fact that the issue was fairly debatable. Gillis v. City of McComb, 860 So. 2d 833 (Miss. Ct. App. 2003).

The zoning decision of a local governing body which appears to be "fairly debatable" will not be disturbed on appeal, and will be set aside only if it clearly appears that the decision is arbitrary, capricious, discriminatory, illegal, or not supported by substantial evidence. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

Owners of residential property located near property that was rezoned by the city had standing to appeal from a decision of the Circuit Court regarding the rezoning classification since the value of their property might be affected by the zoning of the subject property. Luter v. Oakhurst Assocs., 529 So. 2d 889 (Miss. 1988).

A municipal taxpayer and owner of property rezoned by the city had standing to prosecute an appeal from the Circuit Court's reversal of the city's decision to rezone, and was a proper party appellant. Luter v. Hammon, 529 So. 2d 625 (Miss. 1988).

Decision of city fathers in drawing and maintaining line past which commercial development would not be allowed was not arbitrary, capricious, or unreasonable, where there was substantial evidence supporting both sides of rezoning application, thus making ultimate decision fairly debatable; same reasoning applied to denial of assertion that zoning restriction amounted to confiscatory taking in violation of due process of law under constitution because that issue is intertwined with review of whether zoning decision is arbitrary, capricious, or unreasonable. Saunders v. City of Jackson, 511 So. 2d 902 (Miss. 1987).

Decision of local governing board, upon appeal, is presumed valid, and burden is upon person seeking to set it aside to show that it is arbitrary, capricious, and unreasonable, which will be found unless record contains specific finding by such board that one or both of criteria required for change have been met, and in addition thereto sufficient evidence to support such finding; to support, on appeal, reclassification of zones, record at minimum should contain map showing circumstances of area, changes in neighborhood, statistics showing public need, and such further matters of proof as necessary so that rational, informed judgment may be made as to what governing body considered, and when there is no proof of such in record, court must conclude there was neither change nor public need. Board of Aldermen v. Conerly, 509 So. 2d 877 (Miss. 1987).

Where original classification of annexed land under "automatic zoning" ordinance was not binding on neighboring landowners for failure to comply with this section and was merely temporary classification pending determination by city council of proper classification, there was no need to show material change in surroundings or prior mistake in order to reclassify land. Reclassification decision needed only to meet test of determining whether it was unreasonable, arbitrary, or an abuse of discretion. Gatlin v. City of Laurel, 312 So. 2d 435 (Miss. 1975).

Classification of property for zoning is a legislative rather than a judicial matter, and the courts generally will not interfere or substitute their own judgment for that of the municipality, although zoning is subject to judicial review as to whether it is reasonable, arbitrary, discriminatory, confiscatory, or an abuse of discretion. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

Although if timely attack had been made upon the zoning ordinance, the court would have had to hold it void since the municipal authorities failed to follow the statutory procedure, where the ordinance had been amended 32 times since taking effect in 1940, the population of the city had more than doubled, in that time, 7,100 permits, representing millions of dollars in expenditures, had been issued under the ordinance, and the appellants, who were attacking the ordinance, had obtained permits and licenses thereunder, the ordinance would be upheld. Walker v. City of Biloxi, 229 Miss. 890, 92 So. 2d 227 (1957).

Courts cannot interfere unless action of city commissioners in placing certain property in residential zone was unreasonable and arbitrary. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

ATTORNEY GENERAL OPINIONS

Since Section 17-1-15 provides a procedure for establishing and amending zoning ordinances and regulations and a method of determining the will of the electorate by requiring fifteen days notice prior to a public hearing before the adoption of any zoning ordinance, a board of supervisors may not hold an election on a proposed county zoning ordinance under "Home Rule". Gex, May 3, 1996, A.G. Op. #96-0180.

Section 17-1-15 requires only one public hearing before adopting an ordinance. However, if substantive changes are made to an ordinance following a public hearing, then another hearing should be held to give citizens a chance to voice their opinions on those changes. Gex, October 4, 1996, A.G. Op. #96-0623.

If the governing authorities of a Town have adopted a comprehensive zoning ordinance in accordance with Section 17-1-1 et seq. and if an individual petitions the governing authorities to rezone specific property for the purpose of opening a child care facility in a residential area, then the governing authorities may in their discretion grant that individual a variance in accordance with Sections 17-1-15 and 17-1-17. McDowell, October 25, 1996, A.G. Op. #96-0666.

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

A determination by Mississippi Department of Environmental Quality as to an appropriate runoff plan would not supercede a stricter zoning decision by a county board of supervisors on the same matter. Chamberlin, Jan. 23, 2004, A.G. Op. 03-0540.

RESEARCH REFERENCES

ALR. Validity and construction of provisions of zoning statute or ordinance respecting protest or petition by property owners. 4 A.L.R.2d 335.

Standing of owner of property adjacent to zoned property, but not within territory of zoning authority, to attack zoning. 69 A.L.R.3d 805.

Zoning: construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time. 66 A.L.R.4th 1012.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 125 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18 Am. Jur. Pl & Pr Forms (Rev), Notice, Form 15 (affidavit of notice by publication).

13A Am. Jur. Legal Forms 2d, Notice, § 186:38 (affidavit of having given notice by publication).

20A Am. Jur. Legal Forms 2d, Zoning and Planning, §§ 268:54-268:56 (amending ordinance).

16 Am. Jur. Trials, Public Hearing before Zoning Commission §§ 41-52.

CJS. 101A C.J.S., Zoning and Land Planning §§ 66-96.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-1-17. Changes.

Zoning regulations, restrictions and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed upon at least fifteen (15) days' notice of a hearing on such amendment, supplement, change, modification or repeal, said notice to be given in an official paper or a paper of general circulation in such municipality or county specifying a time and place for said hearing. The governing authorities or any municipal agency or commission, which by ordinance has been theretofore so empowered, may provide in such notice that the same shall be held before the city engineer or before an advisory committee of citizens as hereinafter provided and if the hearing is held before the said engineer or advisory committee it shall not be necessary for the governing body to hold such hearing but may act upon the recommendation of the city engineer or advisory committee. Provided, however, that any party aggrieved with the recommendation of the city engineer or advisory committee shall be entitled to a public hearing before the governing body of the city, with due notice thereof after publication for the time and as provided in this section. The governing authorities of a municipality which had a population in excess of one hundred forty thousand (140,000) according to the 1960 census, or of a municipality which is the county seat of a county bordering on the Gulf of Mexico and the State of Alabama or of a municipality which had a population in excess of forty thousand (40,000) according to the 1970 census and which is within a county bordering on the Gulf of Mexico may enact an ordinance restricting such hearing to the record as made before the city engineer or advisory committee of citizens as herein above provided.

In case of a protest against such change signed by the owners of twenty percent (20%) or more, either of the area of the lots included in such proposed change, or of those immediately adjacent to the rear thereof, extending one hundred sixty (160) feet therefrom or of those directly opposite thereto, extending one hundred sixty (160) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fifths (3/5) of the members of the legislative body of such municipality or county who are not required by law or ethical considerations to recuse themselves.

SOURCES: Codes, 1930, § 2478; 1942, § 3594; Laws, 1926, ch. 308; Laws, 1962, ch. 553; Laws, 1971, ch. 377, § 1; Laws, 1975, ch. 396; Laws, 1979, ch. 504; Laws, 2004, ch. 551, § 1, eff from and after July 1, 2004.

Cross References — Permits for structures or trees, or variances in use from airport zoning regulations, see § 61-7-17.

JUDICIAL DECISIONS

1. In general.
2. Changes in regulations, restrictions, and boundaries.
3. —Burden of proving need for change.
4. —Application of doctrine of res judicata.
5. Judicial review.

1. In general.

A rezoning was not validly approved where all the residents, with the exception of one, within 160 feet of the lot proposed for rezoning, signed a petition opposing the rezoning and the petition was entered as an exhibit and only three of five aldermen voted to approve the rezoning request. Tippitt v. City of Hernando, 780 So. 2d 649 (Miss. Ct. App. 2000).

Amendment of city zoning ordinance was improper where neither real estate developer nor city produced evidence to support amendment, where firmly established rule was that before zoning board reclassified property from one zone to another, there must be proof either (1) that there was mistake in original zoning or (2) that character of neighborhood had changed to extent to justify reclassification, and that there was public need for rezoning. Board of Aldermen v. Conerly, 509 So. 2d 877 (Miss. 1987).

The procedural rules and regulations found in a city's zoning ordinance are in aid of the city's performance of its legislative zoning function, and it is the city which is vested with the final authority for determining whether its procedural requisites have been met or, if it pleases, waiving them, with 2 exceptions, one of which concerns those cases wherein the municipal zoning authorities may have said to have transgressed some important limitation or procedure imposed by state law, and the other appears where the procedural deficiencies may have said to contravened a citizen's due process rights. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

The due process rights, if any, guaranteed to objectors of a rezoning proposal is reasonable advance notice of the substance of the rezoning proposal together with the opportunity to be heard at all critical stages of the process. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

In fairness to adjacent landowners city council is required to conduct hearing where after adjacent landowners requested public hearing before city council pursuant to § 17-1-17, council, in role of conducting hearing, summarily and without explanation rejected recommendation of zoning board by denying petition to rezone. Cutchens v. Bryant, 449 So. 2d 231 (Miss. 1984).

Although a city council's denial of a petition for rezoning was unsupported by the evidence, fairness to all parties required that the council conduct a hearing in order to consider both positions and render a proper decision so that reclassification of the property would be based upon evidence presented in an open hearing as provided by § 17-1-17, rather than by error or mistake. Cutchens v. Bryant, 449 So. 2d 231 (Miss. 1984).

A city council exceeded its lawful authority in zoning property as industrial where it did not give public notice of the hearing or make a finding of material change. Cowan v. Gulf City Fisheries, Inc., 379 So. 2d 524 (Miss. 1980).

If a city is going to rely on that provision of this section requiring more than a majority vote to rezone property, the burden is upon that city to affirmatively prove that twenty per cent or more of the protesting landowners fit within that class of landowners outlined in the statute and it must make a special finding to that effect in its order denying the rezoning. Tindall v. City of Louisville, 338 So. 2d 998 (Miss. 1976).

Ordinance made by municipality pursuant to last sentence of first paragraph of Code 1942, § 3594, which required that any person desiring to appeal a decision of the zoning board should give notice thereof to the director of the zoning department within 15 days from the date of the rendition of the board's decision was a valid and reasonable exercise of municipal authority. City of Jackson v. McMurry, 288 So. 2d 23 (Miss. 1974).

Under the provision of Code 1942, § 3594 that "the governing authorities...may act upon the recommendation of the city engineer or advisory committee," it is evident that a city may properly exercise its legislative function, where there is no appeal from the advisory committee, by simply adopting the recommendation of the committee, and it does not, by so doing, delegate its zoning authority because it is not bound by the recommendation of the advisory committee. City of Jackson v. McMurry, 288 So. 2d 23 (Miss. 1974).

A city council was not in error in holding that there was no need for public reclassification of the subject property where the proof was that, though surrounding territory was zoned commercial and industrial, it actually consisted largely of one-family dwellings. Presto Mfg. Co. v. Shelby, 244 So. 2d 8 (Miss. 1971).

Where a statute permits amendment of a zoning ordinance by a two-thirds vote of the city council, an ordinance requiring a unanimous vote is ineffective. City of Jackson v. Freeman-Howie, Inc., 239 Miss. 84, 121 So. 2d 120 (1960).

Where it was shown that the plaintiff's lots could no longer properly be utilized for residential purposes, some of the lots in that area of the city had been rezoned for commercial purposes, there was a distinct need of sleeping accommodations in the vicinity, and the result of the city council denying plaintiff's petition to rezone his lots from residential to commercial in order that hotel courts might be erected practically deprived plaintiff of the use of the property, the action of the city council was manifestly arbitrary and capricious. City of Hattiesburg v. Pittman, 233 Miss. 544, 102 So. 2d 352 (1958).

2. Changes in regulations, restrictions, and boundaries.

Surrounding property owners were estopped from challenging the 2001 adoption of a city's zoning map because the owners did not challenge the zoning until seven years later and any alleged technical failings in the city's notice under Miss. Code Ann. § 17-1-17 were insufficient to invalidate the official zoning map that had been relied upon by the city and its residents for many years. Riverside Traffic Sys. v. Bostwick, 78 So. 3d 907 (Miss. Ct. App. 2011), vacated by 78 So. 3d 881, 2011 Miss. LEXIS 553 (Miss. 2011).

Record revealed that the city's comprehensive plan was not amended to comply with the rezoning of a portion of the neighborhood from RB property to R1A property, and at the hearing, the city admitted that the comprehensive plan was not amended to comply with the zoning change, however, the city maintained that it would amend the comprehensive plan if the zoning change was permitted; Miss. Code Ann. §§ 17-1-11, 17-1-15, and 17-1-17 contemplated necessary amendments to comprehensive plans and zoning ordinances, and the trial court did not err by finding that the rezoning was compatible with the comprehensive plan. Bridge v. Mayor & Bd. of Aldermen of Oxford, 995 So. 2d 81 (Miss. 2008).

Notwithstanding that the statute required 15 days notice before zoning ordinances could be amended, the appellants could not challenge a city zoning ordinance on the basis that it was amended only 14 days after the 1976 comprehensive zoning ordinance was adopted as both the city and a yacht club within the city had relied upon the legality of the ordinance for over two decades. McKenzie v. City of Ocean Springs, 758 So. 2d 1028 (Miss. Ct. App. 2000).

A building permit to construct a bulk oil and gas distribution plant was improperly revoked after the adoption of an urban renewal plan which prohibited such use, where the adoption of the plan did not ipso facto amend or change the zoning laws, to which all housing projects were subject, and where the housing authority failed to comply with the statutory provisions for effecting a change in the zoning laws. Key Petro., Inc. v. Housing Auth., 357 So. 2d 920 (Miss. 1977).

The fact that a lot would be worth $45,000 if rezoned to permit the construction of a filling station, while as a residential lot it is only worth $11,000, is no justification for granting a petition seeking rezoning, for a variance should not be granted merely because it would be to the financial advantage of the owner. Westminster Presbyterian Church v. City of Jackson, 253 Miss. 495, 176 So. 2d 267 (1965).

This section [Code 1942, § 3594] does not confer upon remonstrants power to veto a proposed amendment of a zoning ordinance, but vests it in the municipal authorities. City of Hattiesburg v. Mercer, 237 Miss. 423, 115 So. 2d 165 (1959).

Zoning authorities may properly refuse a variance to permit operation of a filling station on the ground that other stations are being operated on property similarly zoned, where a filling station at the location in question would materially add to traffic hazards. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

3. —Burden of proving need for change.

Burden of proof to support requested change in zoning ordinance is upon applicant, and requirements for reclassification must be shown by clear and convincing evidence. Board of Aldermen v. Conerly, 509 So. 2d 877 (Miss. 1987).

Before property is reclassified from one zone to another, those seeking the change must prove by clear and convincing evidence either, (1) that there was a mistake in the original zoning, or (2) the character of the neighborhood has changed to such an extent as to justify rezoning and that public need exists for rezoning. Broadacres, Inc. v. City of Hattiesburg, 489 So. 2d 501 (Miss. 1986).

In order to have property rezoned, the applicant must establish by clear and convincing evidence that the character of the neighborhood has changed since the date of the last request for rezoning and that a public need exists for rezoning. City of Jackson v. Aldridge, 487 So. 2d 1345 (Miss. 1986).

In order to justify rezoning of property from one classification to another, there must be proof either that there was a mistake in the original zoning, or that the character of the neighborhood has changed to such an extent as to justify reclassification. Purdy v. State, 287 So. 2d 436 (Miss. 1973).

Where four petitioners, seeking the rezoning of the four corners of an intersection from residential to commercial classification for the purpose of removing residence therefrom and erecting an automobile service station on each corner, failed to show a need for commercial activities within the area and failed to show substantial changes in the area since the original zoning, and where it was shown that commercial activities within the neighborhood would depreciate the use and value of the surrounding property as residential, the action of the city council in denying the petitions was neither arbitrary, capricious, confiscatory nor unreasonable, since the burden of proving a need for change in zoning rests squarely on those property owners requesting change. City of Jackson v. Husbands, 233 So. 2d 817 (Miss. 1970).

Where owner's previous application to have property rezoned had been denied and no appeal was taken, the burden of proof was upon the owner to allege and prove on the hearing of a subsequent application a material change of circumstances, for otherwise the city council was correct in applying the doctrine of res judicata. Westminster Presbyterian Church v. City of Jackson, 253 Miss. 495, 176 So. 2d 267 (1965).

4. —Application of doctrine of res judicata.

Developer's lawsuit in federal district court against a County Board of Supervisors that denied the developer's application for a zoning change was dismissed on the grounds of res judicata and collateral estoppel because the developer had unsuccessfully appealed the Board's decision to the state court, and the developer could have raised his claims of due process violations in the state court proceeding. A&F Props., LLC v. Madison County Bd. of Supervisors, 414 F. Supp. 2d 618 (S.D. Miss. 2005).

Where a property owner's first application for a reclassification of residential zone A-1 property to residential A-3, providing for, among other uses, apartments, apartment hotels, and apartment buildings, with no restrictions as to height or area of ground per family unit, was disapproved, in hearing the owner's second application for a reclassification to residential A-2 zone, providing for apartments or multiple dwellings with at least 2,000 square feet per family unit, the city was not required to apply the doctrine of res judicata which would require the owner to allege and prove a change of circumstances since the time of the denial of the first petition. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

Generally when a change is sought and denied, a city must apply the doctrine of res judicata to the facts that then existed when considering a petition to rezone the same property to the same classification, but a city is not required to apply the doctrine of res judicata when the new petition seeks a lesser variance than did the former petition which was denied. Yates v. Mayor & Comm'rs of Jackson, 244 So. 2d 724 (Miss. 1971).

5. Judicial review.

The burden is upon the party invoking the two-thirds vote requirement to affirmatively prove that the owners of 20 percent or more of the area specified in this section have protested the rezoning; where that party fails to meet the burden, a majority vote by the board will be sufficient to require rezoning of the property. Fondren N. Renaissance v. Mayor of Jackson, 749 So. 2d 974 (Miss. 1999).

A circuit court order remanding a rezoning case to the city council for a determination of the number and percentage of eligible property owners who protested the zoning change and ordering that a report of its findings and conclusions be filed with the court clerk to become part of the record was not intended to constitute a final judgment contemplated by § 11-51-75, but, rather, the circuit court, sitting as an appellate court, retained jurisdiction pending record expansion and supplementation. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

The zoning decision of a local governing body which appears to be "fairly debatable" will not be disturbed on appeal, and will be set aside only if it clearly appears that the decision is arbitrary, capricious, discriminatory, illegal, or not supported by substantial evidence; neither the Supreme Court nor the circuit court should sit as a "super-zoning commission"; thus, the circuit court erred in overturning a city council's decision that the character of a neighborhood had changed substantially and that a public need existed to justify rezoning where the decision of the city council was fairly debatable. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

The party relying on the ⅔ majority voting requirement of § 17-1-17 has the burden of proving that 20 percent or more of the protesting landowners fit within the class of landowners outlined in the statute, and this showing must be made before the local governing body and not for the first time on appeal; thus, the circuit court's remand of a rezoning case to the city council for the purpose of applying the enhanced voting requirements of § 17-1-17 was unwarranted where the applicability of § 17-1-17 was not raised until the appeal was taken to the circuit court, and the circuit court erroneously placed upon the city council the burden of satisfying the requirements of § 17-1-17, as it was up to the protesting landowners to affirmatively show that they were within the statutory class who could validly object. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

Decision of city fathers in drawing and maintaining line past which commercial development would not be allowed was not arbitrary, capricious, or unreasonable, where there was substantial evidence supporting both sides of rezoning application, thus making ultimate decision fairly debatable; same reasoning applied to denial of assertion that zoning restriction amounted to confiscatory taking in violation of due process of law under constitution because that issue is intertwined with review of whether zoning decision is arbitrary, capricious, or unreasonable. Saunders v. City of Jackson, 511 So. 2d 902 (Miss. 1987).

Decision of local governing board, upon appeal, is presumed valid, and burden is upon person seeking to set it aside to show that it is arbitrary, capricious, and unreasonable, which will be found unless record contains specific finding by such board that one or both of criteria required for change have been met, and in addition thereto sufficient evidence to support such finding; to support, on appeal, reclassification of zones, record at minimum should contain map showing circumstances of area, changes in neighborhood, statistics showing public need, and such further matters of proof as necessary so that rational, informed judgment may be made as to what governing body considered, and when there is no proof of such in record, court must conclude there was neither change nor public need. Board of Aldermen v. Conerly, 509 So. 2d 877 (Miss. 1987).

The Supreme Court will not substitute its judgment for that of the municipal zoning authorities unless the rezoning decision clearly is arbitrary, capricious and wholly unreasonable. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

Upon evidence establishing the change and public need requirements of the rule that, absent mistake in the original zoning, reclassification may be had only where there has been change in the character of the neighborhood such an extent as to justify the rezoning, coupled with a public need for rezoning, the Supreme Court would defer to the judgment of the municipal zoning authorities in rezoning from single family residential use to a special use recreation district of a 50-acre tract of land located in a flood plain. Thrash v. Mayor & Comm'rs of Jackson, 498 So. 2d 801 (Miss. 1986).

In zoning cases on appeal, the cause is not tried de novo, and where the record failed to show clear and uncontradicted evidence of change in the area sought to be rezoned between the last action of the city council in regard to its zoning classification and the present, and evidence as to public need for rezoning was inconclusive, the circuit court in ordering the property rezoned improperly substituted its judgment for that of the city council. City of Jackson v. Aldridge, 487 So. 2d 1345 (Miss. 1986).

The refusal to rezone a piece of property from residential to commercial was an arbitrary and capricious action and was not supported by the evidence where the property was isolated between three commercial lots immediately to its south and north and the neighborhood was becoming largely commercial. Tindall v. City of Louisville, 338 So. 2d 998 (Miss. 1976).

An order of a county board of supervisors denying the request of a development company to rezone one tract in a neighborhood from residential to commercial, and another from residential to unlimited apartments, was not unreasonable, arbitrary, or capricious, in the absence of evidence showing a material change in the character of the neighborhood or some public need for businesses and multiple apartments in the neighborhood, and the circuit court, as the appellate reviewing authority, was in error in substituting its judgment for that of the governing authority of the county. Carnes v. Harrow Dev. Co., 244 So. 2d 27 (Miss. 1971).

Where ordinance designated property as residential property, and question was doubtful, court would not interfere by mandamus to compel issuance of building permit. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

Courts cannot interfere unless action of city commissioners in placing certain property in residential zone was unreasonable and arbitrary. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 17-1-17 provides zoning ordinance amendments which are challenged by protest shall not become effective unless affirmatively approved by vote of "two-thirds (⅔) of all the members of the legislative body of such municipality or county"; this provision requires at least four members of county board of supervisors be present and that there are at least four affirmative votes in favor of amendment; had legislature intended otherwise, there would likely be statutory language to effect of "two-thirds of all members present and voting", as is case with certain municipal veto override provisions, such as Miss. Code Section 21-8-17. Haque, Jan. 20, 1993, A.G. Op. #92-0990.

Miss. Code Section 17-1-17 does not require that all matters presented to Commission be appealed de novo to governing board, unless matter involves amendment, supplement, change, modification or repeal of zoning regulations, restrictions or boundaries. Leslie, May 26, 1993, A.G. Op. #93-0320.

Conditional use may result in prohibited use and it is therefore reasonable to require adherence to statutory provisions of statute. Haque, July 28, 1993, A.G. Op. #93-0548.

The deadline for filing an appeal from the decision of the Mayor and Board of Aldermen under Section 17-1-17, is 10 days because, any party aggrieved by the decision of the governing authorities may appeal the decision to circuit court within 10 days under Section 11-51-75. Peeples, June 14, 1995, A.G. Op. #95-0359.

Pursuant to Section 17-1-17, property separated by an interstate highway and two frontage roads would still be considered property "directly opposite" of the rezoned property. Haque, August 17, 1995, A.G. Op. #95-0560.

Under Section 17-1-17 an affirmative vote to change the zoning ordinance can be made by 2/3 of the remaining 4 members. Holladay, January 10, 1996, A.G. Op. #96-0007.

If the governing authorities of a Town have adopted a comprehensive zoning ordinance in accordance with Section 17-1-1 et seq. and if an individual petitions the governing authorities to rezone specific property for the purpose of opening a child care facility in a residential area, then the governing authorities may in their discretion grant that individual a variance in accordance with Sections 17-1-15 and 17-1-17. McDowell, October 25, 1996, A.G. Op. #96-0666.

A municipal ordinance, be it related to zoning of property or any other subject, may not be adopted or amended without affirmative action of the governing authorities. Cruthird, Nov. 19, 1999, A.G. Op. #99-0619.

In case of a protest, the affirmative vote of two thirds of the members of the governing body of the municipality is required for an amendment to become effective, regardless of whether one or more members recuse themselves or whether one or more members are absent for any reason. Snyder, Feb. 11, 2000, A.G. Op. #2000-0016.

Any party aggrieved by the recommendation of a county Planning Commission is entitled to a public hearing before the board of supervisors of a county. Evans, Oct. 20, 2000, A.G. Op. #2000-0584.

Enacting a new regulation on billboards, such as a ban, constitutes an amendment to present zoning ordinances and must be done in conformity with the law. Austin, Jr., Nov. 10, 2000, A.G. Op. #2000-0647.

In order to invoke the 2/3 majority requirement of the statute, signatures of 20 percent of owners of all properties affected (or those in the vicinity as defined in the statute) by the proposed amendment are required; applying the rule to a proposed amendment that would change uses allowed on properties throughout the zoning jurisdiction of the county, 20% of all such property owners or those in the statutorily defined vicinity would meet the protest requirements. Austin, Jr., Nov. 10, 2000, A.G. Op. #2000-0647.

Each described area, whether it be the lots included in the proposed change, the lots immediately adjacent to the rear, or those directly opposite the subject parcel, is to be treated separately for the purposes of determining the 20 percent figure. Clark, Feb. 9, 2001, A.G. Op. #2001-0067.

Owners of property directly adjacent to the front, rear, or side of the subject property, and within 160 feet of the subject property, have standing to protest the rezoning of the subject property; similarly, owners of property directly opposite the subject property, if separated by a street, and within 160 feet, may protest. Clark, Feb. 9, 2001, A.G. Op. #2001-0067.

Adjoining streets are not to be considered in the calculation of the 160-foot measurement; the measurement of 160 feet begins from the street frontage of lots opposite the subject property. Clark, Feb. 9, 2001, A.G. Op. #2001-0067.

A petition in protest of a rezoning must be signed by the owners of 20 percent of the total area of lots (in any one of the separate described areas) before the statute requires the governing authorities to approve the rezoning measure by a 2/3 supermajority; that is, the 20 percent figure should be calculated on the basis of the percentage of land owned by the protestors, whatever their number, within the area entitled to be included for purposes of the statute compared to the total amount of land included in that area. Clark, Feb. 9, 2001, A.G. Op. #2001-0067.

The public hearing required by the statute is the venue for citizens to express their concerns regarding the adoption of a proposed zoning ordinance, and the governing authorities may take those concerns into consideration in adopting the ordinance; thus, such public hearing procedure applies to the zoning of an area newly annexed by a city. Mitchell, Mar. 2, 2001, A.G. Op. #01-0097.

The super-majority provisions set forth in the statute do not apply to the initial adoption of zoning regulations and, therefore, do not apply to the zoning of an area newly annexed by a city. Mitchell, Mar. 2, 2001, A.G. Op. #01-0097.

The mayor is not required to vote to achieve a two-thirds majority vote of all members of the board of mayor and commissioners in favor of a zoning change. Twiford, III, Apr. 5, 2002, A.G. Op. #02-0171.

When there has been a protest that meets the statutory criteria, a proposed zoning amendment shall not become effective except by the affirmative vote of two-thirds of the remaining members. Cothran, Aug. 4, 2004, A.G. Op. 04-0347.

In a case where a city is under a special charter that allows for four aldermen with the mayor voting only with a tie among the aldermen, and one alderman has resigned, when there has been a protest that meets the statutory criteria, should the mayor vote to break a two-two tie and make it a vote of three-two in favor of the proposed amendment, that would constitute a three-fifths vote of the legislative body and a proposed amendment would become effective. Cothran, Aug. 4, 2004, A.G. Op. 04-0347.

Where a planning commission hearing meeting was not held due to severe weather, the county must comply with the notice provisions of Section 17-1-17 for a rescheduled meeting. Lewis, Sept. 23, 2005, A.G. Op. 05-0479.

RESEARCH REFERENCES

ALR. Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners. 4 A.L.R.2d 335.

Standing of owner of property adjacent to zoned property, but not within territory of zoning authority, to attack zoning. 69 A.L.R.3d 805.

Validity, construction, and effect of agreement to rezone, or amendment to zoning ordinance, creating special restrictions or conditions not applicable to other property similarly zoned. 70 A.L.R.3d 125.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners. 7 A.L.R.4th 732.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 140 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form); Form 15 (affidavit of notice by publication).

13A Am. Jur. Legal Forms 2d, Notice, § 186:38 (affidavit of having given notice by publication).

20A Am. Jur. Legal Forms 2d, Zoning and Planning, §§ 268:54-268:56 (amending ordinances).

2 Am. Jur. Proof of Facts, Appraisals, Proof No. 3 (market value of real property-problems affecting value estimates).

10 Am. Jur. Proof of Facts, Restrictive Covenants, Proof No. 1 (change in zoning restrictions, pp 331-332).

CJS. 101A C.J.S., Zoning and Land Planning §§ 66-75.

Law Reviews. Gladden, The Change or Mistake Rule: A Question of Flexibility. 50 Miss. L. J. 375, March 1979.

§ 17-1-19. Remedies of local governing authorities.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land, is used in violation of the zoning law or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of any county or municipality, in addition to other remedies, may institute any appropriate action or proceedings, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

SOURCES: Codes, 1930, § 2480; 1942, § 3596; Laws, 1926, ch. 308; Laws, 1962, ch. 554, eff from and after July 1, 1962.

Cross References — Penalties for violations of zoning ordinances, see § 17-1-27.

JUDICIAL DECISIONS

1. Nongovernmental entities.
2. In general.

1. Nongovernmental entities.

Private parties do not have standing to initiate criminal proceedings for violation of zoning ordinance under statute which neither expressly grants nor denies private party the right to initiate criminal proceedings for zoning ordinance violations. City of Houston v. Tri-Lakes Ltd., 681 So. 2d 104 (Miss. 1996).

Any violation of the county's regulations regarding notice of non-compliance with the county's subdivision ordinance did not deprive a developer and lot owners of their due process right with respect to the county's action for declaratory and injunctive relief to bring the lot into compliance with the ordinance since such a procedure was not a prerequisite to the filing and prosecution of the lawsuit. Additionally, the rights of the developer and the lot owners in the premises was reasonable advance notice of the lawsuit and the opportunity to appear and be heard. Johnson v. Hinds County, 524 So. 2d 947 (Miss. 1988).

2. In general.

City did not have the discretion to deny the corporation's building permit as the use of the building as a "wine and spirits" store was not unlawful; consequently, Miss. Code Ann. § 17-1-19 would not apply and the city admitted that no zoning prohibitions were in effect at the time of the denial of the permit, and the corporation gave no indication that it anticipated selling liquor without the package retailer's permit. Vineyard Invs., LLC v. City of

Madison, 999 So. 2d 438 (Miss. Ct. App. 2009).

Under the statute, a city had the right to seek an injunction for a person's blatant violation of the city zoning ordinance by locating a mobile home inside the city limits and outside of a mobile home park. City of Eupora v. Hodges, 722 So. 2d 695 (Miss. 1998).

Municipality is not limited to enforcing a penalty, but may seek injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

An injunction may be obtained against an extension of a non-conforming use. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

Designation of city engineer as enforcement officer for zoning does not affect the power of the board of mayor and commission to seek injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

Exhaustion of the administrative remedy in zoning matters by appeal to a board of review, held not to condition city's right to sue for injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

RESEARCH REFERENCES

ALR. Motive of members of municipal authority approving or adopting zoning ordinance or regulation as affecting its validity. 71 A.L.R.2d 568.

Enforcement of zoning regulation as affected by other violations. 4 A.L.R.4th 462.

Construction of new building or structure on premises devoted to nonconforming use as violation of zoning ordinance. 10 A.L.R.4th 1122.

Validity and construction of restrictive covenant prohibiting or governing outside storage or parking of house trailers, motor homes, campers, vans, and the like, in residential neighborhoods. 32 A.L.R.4th 651.

Laches as defense in suit by governmental entity to enjoin zoning violation. 73 A.L.R.4th 870.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 255 et seq.

1 Am. Jur. Proof of Facts 3d 495, Special Damages Sufficient to Give Standing to Enjoin Zoning Violations.

CJS. 101A C.J.S., Zoning and Land Planning §§ 150-208.

§ 17-1-21. When local regulations to govern.

Except as otherwise provided in Article VII of the Chickasaw Trail Economic Development Compact described in Section 57-36-1, whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building, or a less number of stories, or a greater percentage of lot to be left unoccupied, or impose other standards higher than are required by the regulations made under the authority of Sections 17-1-1 through 17-1-27, inclusive, the provisions of such other statute, or local ordinance or regulation shall govern; otherwise the provisions of the regulations made under the authority of Sections 17-1-1 through 17-1-27, inclusive, shall be controlling.

SOURCES: Codes, 1930, § 2481; 1942, § 3597; Laws, 1926, ch. 308; Laws, 1998, ch. 553, § 7, eff from and after July 1, 1998.

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Cross References — Penalties for violations of zoning ordinances, see § 17-1-27.

RESEARCH REFERENCES

ALR. Application of state and local construction and building regulations to contractors engaged in construction projects for the federal government. 131 A.L.R. Fed. 583.

CJS. 101A C.J.S., Zoning and Land Planning § 10.

§ 17-1-23. Subdivision regulation.

(1) When new subdivisions are laid out, the governing authority of each municipality or county may, before allowing dedication, impose such terms as may be deemed necessary to make the provisions of Sections 17-1-1 through 17-1-27, inclusive, effective, and such governing authorities may receive easements in the land affected whereby such sections may be made effective.

(2) The board of supervisors of any county may order that no plat of a subdivision shall be recorded until it has been approved by the board of supervisors, and the board of supervisors shall have power to require the installation of utilities and laying out of streets in subdivisions or to accept performance bonds in lieu thereof; the board of supervisors of any county bordering on the State of Tennessee having a population of more than sixty-seven thousand nine hundred (67,900) but less than seventy thousand (70,000) according to the 1990 federal census and having a land area of more than four hundred seventy (470) square miles but less than five hundred (500) square miles may also, in lieu thereof, require the deposit of monies with the county which shall be placed in a special interest-bearing account in the county treasury, and such board of supervisors at the appropriate time shall spend monies from such account solely for the purpose of constructing or improving the roads and other infrastructure within the subdivision with respect to which the deposit or deposits were made.

(3) The governing authorities of a municipality may provide that any person desiring to subdivide a tract of land within the corporate limits shall submit a map and plat of such subdivision, and a correct abstract of title of the land platted, to said governing authorities, to be approved by them before the same shall be filed for record in the land records of the county; and where the municipality has adopted an ordinance so providing, no such map or plat of any such subdivision shall be recorded by the chancery clerk unless same has been approved by said governing authorities. In all cases where a map or plat of the subdivision is submitted to the governing authorities of a municipality, and is by them approved, all streets, roads, alleys and other public ways set forth and shown on said map or plat shall be thereby dedicated to the public use, and shall not be used otherwise unless and until said map or plat is vacated in the manner provided by law, notwithstanding that said streets, roads, alleys or other public ways have not been actually opened for the use of the public. If any easement dedicated pursuant to the provisions of this section for a street, road, alley or other public purpose is determined to be not needed for the public purpose, the easement may be declared abandoned, and ownership of the fee underlying the easement shall revert, regardless of the date of dedication, to

the adjoining property owner or owners at the time of abandonment. Ownership of such easement shall extend to the centerline of said abandoned street, road or public way. Such abandonment and reversion shall not affect any private easements which might exist.

(4) If the owner of any land which shall have been laid off, mapped or platted as a city, town or village, or addition thereto, or subdivision thereof, or other platted area, whether inside or outside a municipality, desires to alter or vacate such map or plat, or any part thereof, he may petition the board of supervisors of the county or the governing authorities of the municipality for relief in the premises, setting forth the particular circumstances of the case and giving an accurate description of the property, the map or plat of which is to be vacated or altered and the names of the persons to be adversely affected thereby or directly interested therein. However, before taking such action, the parties named shall be made aware of the action and must agree in writing to the vacation or alteration. Failure to gain approval from the parties named shall prohibit the board of supervisors or governing authorities from altering or vacating the map or plat, or any part thereof. Any alterations of a plat or map must be recorded in the appropriate location and a note shall be placed on the original plat denoting the altered or revised plat. No land shall be subdivided nor shall the map or plat of any land be altered or vacated in violation of any duly recorded covenant running with the land. Any municipality which shall approve such a vacation or alteration pursuant to this section shall be exempt from the sale of surplus real property provisions as set forth in Section 21-17-1.

(5) Subdivision regulation under this section shall not conflict with Article VII of the Chickasaw Trail Economic Development Compact described in Section 57-36-1.

SOURCES: Codes, 1892, § 2937; 1906 § 3328; Hemingway's 1917, § 5825; 1930, §§ 2405, 2475; 1942, §§ 2890.5, 3374-123, 3591; Laws, 1926, ch. 308; Laws, 1950, ch. 491, § 123; Laws, 1956, ch. 197, §§ 1-6; Laws, 1960, ch. 402; Laws, 1997, ch. 459, § 1; Laws, 1998, ch. 553, § 8; Laws, 2008, ch. 339, § 3; Laws, 2009, ch. 531, § 3, eff from and after passage (approved Apr. 14, 2009.)

Editor's Note — The Chickasaw Trail Economic Development Compact, § 57-36-1 et seq., referred to in this section, was repealed by its own terms, effective June 30, 2003.

Cross References — County acting with municipalities located within it, see § 17-1-5.

Planning commission's plan for area development, see § 17-1-11.

Gulf Regional District Commission as planner for counties and cities, see § 17-11-31.

Requirement for making and recording map or plat of additions to towns, see §§ 19-27-21 et seq.

Surveying and mapping of streets, blocks and lots for official map of municipality, see § 21-37-51.

JUDICIAL DECISIONS

1. In general.

For the appellate court to determine that the plat had been altered through abandonment of the road and easements, when there had been no chancery court determination after proper notice under Miss. Code Ann. § 19-27-31, would be to permit the developer to sidestep the procedure for plat alteration that had been prescribed by the Legislature, which the appellate court could not do; therefore, the developer remained enjoined from proceeding with the development of the condominium development until such time as it had secured leave to do so after proper plat alteration proceedings pursuant to Miss. Code Ann. § 19-27-31 or Miss. Code Ann. § 17-1-23(4). COR Devs., LLC v. College Hill Heights Homeowners, LLC, 973 So. 2d 273 (Miss. Ct. App. 2008).

An alley was town property, notwithstanding that the proclamation of incorporation of the town did not provide a property description identical to that contained in the 1906 plat which designated the alley. Sipes v. Town of Tishomingo, 735 So. 2d 1047 (Miss. Ct. App. 1999).

The action of the mayor and board of aldermen of a city in giving preliminary approval to the plat of a subdivision, which did not include dedication by the owner of a portion of his property to allow widening of an existing street to a width of 50 feet, as provided for in the city's subdivision requirements was not arbitrary, capricious, or discriminatory where the subdivision regulations of the city included authorization for the planning commission to vary the regulations. Taquino v. City of Ocean Springs, 253 So. 2d 854 (Miss. 1971).

Where the plat of a subdivision established beyond the limits of a city contained the certificate of the owners and the engineers saying that the designated streets were private ways and not dedicated to the public, and restrictive covenants were placed upon the property to the same effect, there was no implied dedication of a strip of land subsequently used for drains and a dam, and the only part of the strip that could be used as a public street was the part actually improved and maintained by the city after the city limits were extended to encompass this subdivision. Sneed v. State ex rel. Biggers, 230 So. 2d 215 (Miss. 1970).

Under this section [Code 1942, § 2890.5] a county board of supervisors may act in conjunction with municipalities located in the county, or independently. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

Zoning may restrict methods of construction and repair of buildings, provided the zoning ordinance is in accordance with a comprehensive plan pertaining to the use of land. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

In an action to prevent the obstruction of an alley, a showing that the owners of certain lands in 1905 made and recorded a revised map showing the alley in question, use of the map as an official map of the town, the sale of lots by the original owners and subsequent purchasers according to the map, the use of the map for the purpose of the assessment, the non-assessment of streets and avenues for taxes, the opening and paving of most of the streets and avenues shown on the map, as well as other evidence, demonstrated that the town had accepted the dedication of the alley, even though it had not formally done so by ordinance or resolution. Luter v. Crawford, 230 Miss. 81, 92 So. 2d 348 (1957).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 17-1-23, it is up to particular municipal department, and regulations or other laws under which it operates, as to whether department requires services of architect or engineer or some other professional before it issues subdivision permit. Kilpatrick, Jan 8, 1993, A.G. Op. #92-0964.

A board of supervisors that approves a subdivision plat does not automatically assume any responsibilities concerning drainage structures in the subdivision, but the county does have a responsibility to drain water from county roads in a manner which does not cause damage to adjacent properties. Austin, Aug. 8, 1997, A.G. Op. #97-0404.

If a property owner has obtained the written agreement of all affected parties, he may petition the board of supervisors for a change in the subdivision plat in which his property is located in accord with Section 17-1-23; otherwise, he should petition the chancery court pursuant to Section 19-27-31. Sherard, Feb. 9, 2001, A.G. Op. #2001-0041.

The chancery clerk is required to confirm that the governing authorities have granted the petition for the alteration or vacation of the map or plat; this may be accomplished by the municipal governing authorities providing a copy of the resolution or minutes approving the vacating or alteration of the plat or map. Chamberlin, May 24, 2002, A.G. Op. #02-0289.

Provided that the municipality has provided a copy of its minutes or resolution reflecting its approval of the alteration or vacation of the plat or map, the chancery clerk has no authority to inquire behind the minutes. Chamberlin, May 24, 2002, A.G. Op. #02-0289.

When a city annexes property that includes a subdivision with roads that were never accepted by the county but are shown on a map or plat filed in the office of the chancery clerk, these undeveloped and unpaved roads are not automatically city streets. Gurley, Apr. 11, 2003, A.G. Op. #03-0079.

Any infrastructure which is required for the development of a subdivision, such as water lines, sewer lines or other public utilities, should be treated in the same manner as streets and roads. A municipality may not “reimburse” developers for infrastructure which as a matter of course becomes municipal property without compensation as to do so would constitute a donation in violation of the Mississippi Constitution. Hammack, Feb. 17, 2004, A.G. Op. 03-0695.

Determination of those persons that must be named in the petition to alter or vacate a map or plat presented to the board of supervisors and who must agree in writing to the alteration is a question of fact that must be made by the board of supervisors. Furthermore, any scrivener’s error which would require the alteration of a lot line, must follow the procedures set forth in this section or in the alternative, § 19-27-31. Nowak, June 4, 2004, A.G. Op. 04-0208.

RESEARCH REFERENCES

ALR. Power of mortgagor to dedicate land or interest therein. 63 A.L.R.2d 1160.

Access to industrial, commercial, or business premises over premises differently zoned. 63 A.L.R.2d 1446.

Zoning regulations as applied to dancing schools. 85 A.L.R.2d 1150.

Construction and application of zoning regulations in connection with bomb or fallout shelters. 7 A.L.R.3d 1443.

Enforceability, by landowner, of subdivision developer’s oral promise to construct or improve roads. 41 A.L.R.4th 573.

Zoning: residential off-street parking requirements. 71 A.L.R.4th 529.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning §§ 423 et seq.

20A Am. Jur. Legal Forms 2d, Zoning and Planning, § 268:139 (application for approval of subdivision plat); § 268:140 (notice of public hearing on application for approval of subdivision plat); § 268:141 (resolution of planning board approving subdivision plat).

4 Am. Jur. Proof of Facts, Dedication, Proof Nos. 1, 2 (dedication, acceptance, respectively).

CJS. 101A C.J.S., Zoning and Land Planning §§ 118-208.

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 17-1-25. Acceptance for maintenance of subdivision street before subdivision completed.

The governing authorities of each municipality or county of the state, in their discretion, may accept in the name of such municipality or county, for maintenance, any road or roads, or street or streets, as shall be completed to acceptable specifications established by such governing authorities of a municipality or county of each such subdivision or subdivisions as shall be located within the corporate limits of a municipality or the boundaries of a county.

By acceptance of such street or road by such governing authorities, even though such subdivision shall not be completed as proposed or platted, such municipality or county shall not be bound to accept in part or in its entirety such subdivision when it shall be completed except as provided by regular procedures by ordinance or regulation of such municipality or county.

SOURCES: Codes, 1942, § 3374-123.5; Laws, 1966, ch. 601, § 1, eff from and after passage (approved February 22, 1966).

§ 17-1-27. Penalties for violations.

Any person, firm or corporation who shall knowingly and wilfully violate the terms, conditions or provisions of a zoning ordinance adopted under the authority of Sections 17-1-1 through 17-1-25, inclusive, for violation of which no other criminal penalty is prescribed, shall be guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not to exceed One Hundred Dollars ($100.00), and in case of continuing violations without reasonable effort on the part of the defendant to correct same, each day the violation continues thereafter shall be a separate offense.

SOURCES: Codes, 1930, § 2480; 1942, § 3596; Laws, 1926, ch. 308; Laws, 1962, ch. 554, eff from and after July 1, 1962.

Cross References — Conditions under which local regulations will govern, see § 17-1-21.

Imposition of standard state assessment in addition to all court-imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Municipality is not limited to enforcing a penalty, but may seek injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

An injunction may be obtained against an extension of a non-conforming use. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

Designation of city engineer as enforcement officer for zoning does not affect the power of the board of mayor and commission to seek injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

Exhaustion of the administrative remedy in zoning matters by appeal to a board of review, held not to condition city's right to sue for injunction against violation of zoning ordinance. City of Hattiesburg v. L. & A. Contracting Co., 248 Miss. 346, 159 So. 2d 74 (1963).

RESEARCH REFERENCES

ALR. Motive in approving or adopting zoning ordinance or regulation as affecting its validity. 71 A.L.R.2d 568.

Enforcement of zoning regulation as affected by other violations. 4 A.L.R.4th 462.

Laches as defense in suit by governmental entity to enjoin zoning violation. 73 A.L.R.4th 870.

Am Jur. 83 Am. Jur. 2d, Zoning and Planning § 259.

25B Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Forms 70 et seq. (violations).

1 Am. Jur. Proof of Facts 3d 495, Special Damages Sufficient to Give Standing to Enjoin Zoning Violations.

CJS. 101A C.J.S., Zoning and Land Planning § 412.

REGIONAL PLANNING COMMISSION

SEC.	
17-1-29.	Regional planning commissions; membership.
17-1-31.	Term of office of members; filling of vacancies; compensation.
17-1-33.	Regional planning commission to advise local municipalities and counties in planning matters.
17-1-35.	Authority and powers of regional planning commissions.

§ 17-1-29. Regional planning commissions; membership.

Any two or more counties and municipalities are hereby authorized and empowered to create and to establish a regional planning commission to be composed of representatives appointed thereto by each county board of supervisors and municipal legislative body desiring representation on such commission, and to appropriate monies from their respective public funds for the purposes of carrying out the provisions of Sections 17-1-31 through 17-1-35, inclusive. The regional planning commission shall be composed of not to exceed three representatives from each participating county and not to exceed two representatives from each participating municipality; provided, however, the regional planning commission membership shall not exceed fifteen in number. Participating governmental units may designate to membership ex officio and without vote the chairman of the local planning commission and/or the city or county engineer. Counties or municipalities within the State of Mississippi may join with adjacent counties, parishes, and/or municipalities in adjoining states to form an interstate regional planning commission.

SOURCES: Codes, 1942, § 2890.5-01; Laws, 1964, ch. 501, § 1, eff from and after passage (approved May 22, 1964).

Cross References — County acting with municipalities located within it, see § 17-1-5.

Planning commission's plan for area development, see § 17-1-11.

Board of supervisors' approval before recording subdivision plat, see § 17-1-23.

Board of supervisors' requiring utilities and streets in subdivisions, see § 17-1-23.

ATTORNEY GENERAL OPINIONS

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. McLeod, Nov. 26, 2003, A.G. Op. 03-0573.

RESEARCH REFERENCES

CJS. 101A C.J.S., Zoning and Land Planning §§ 211-251.

§ 17-1-31. Term of office of members; filling of vacancies; compensation.

The term of office for the members appointed by the county board of supervisors shall be for a period of four years, and the term of office of the members appointed by the municipalities shall be for a term of three years. The method of filling vacancies shall be determined by the county board of supervisors and municipal legislative bodies, desiring representation on such commission. The members of such regional planning commission representing counties and municipalities shall receive no compensation for their services, but shall be entitled to receive their actual and necessary expenses incurred in the performance of their duties.

SOURCES: Codes, 1942, § 2890.5-02; Laws, 1964, ch. 501, § 2, eff from and after passage (approved May 22, 1964).

§ 17-1-33. Regional planning commission to advise local municipalities and counties in planning matters.

The regional planning commission shall act in an advisory capacity to local municipalities and counties in interstate, regional, metropolitan, county and municipal planning matters involving the identification, discussion coordination and recommending solutions or a course of action in connection with problems including, but not limited to land use, water resources, mosquito control, highways, recreational areas, public schools, sewage and garbage disposal, public libraries, urban development, and other matters concerning the acquisition, planning, construction, development, financing, control, use, improvement and disposition of lands, buildings, structures, facilities, goods and services in the interest of public, or for public purposes involving the expenditures of public funds.

SOURCES: Codes, 1942, § 2890.5-03; Laws, 1964, ch. 501, § 3, eff from and after passage (approved May 22, 1964).

Cross References — General powers of governing authorities in planning and zoning, see § 17-1-3.

§ 17-1-35. Authority and powers of regional planning commissions.

Any regional planning commission created hereunder shall be authorized and empowered as follows:

(a) To adopt rules or procedure for the regulations of its affairs, set forth policies and procedures for the conduct of its business, and to appoint, from among its members, a chairman and vice chairman, to serve annually, provided that such chairman may be subject to reelection.

(b) To adopt an official name, seal, and retain and keep minutes of its meeting in a firmly bound minute book, in which all actions taken by the commission about its business shall so be recorded.

(c) To meet at regular times on one day each and every month of the year.

(d) To acquire, hold, maintain, lease, assign and convey real property, personal and mixed, as may be necessary or desirable for the purpose of maintaining the operations of the commission.

(e) To employ and to compensate such personnel, consultants and technical and professional assistance as shall be necessary to exercise the powers and perform the duties set forth in Sections 17-1-31 through 17-1-35, inclusive.

(f) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under Sections 17-1-31 through 17-1-35, inclusive. The chairman of said regional commission shall be the duly authorized individual to execute contracts on behalf of said commission, upon duly and properly entered resolution of said commission so authorizing him to enter and execute said contract.

(g) To hold public hearings and sponsor public forums in any part of the regional area whenever the commission deems it necessary or useful in the execution of its functions.

(h) To accept and receive, in the furtherance of its functions, funds, grants and service from the federal government, or its agencies; from departments, agencies and instrumentalities of state, municipal or local government; or from private or civic sources.

(i) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county, state or municipality, and to receive and expend federal funds.

(j) To cooperate in the exercise of its planning functions with federal and state agencies.

(k) To be a body corporate and as such, may sue and be sued, in any suit against the commission, service of process shall be had by service upon the chairman with such process.

SOURCES: Codes, 1942, § 2890.5-04; Laws, 1964, ch. 501, § 4; Laws, 2004, ch. 382, § 1, eff from and after passage (approved Apr. 20, 2004.)

Cross References — General powers of governing authorities in planning and zoning matters, see § 17-1-3.

Authority for tax levies to meet cost of administration, see § 17-1-37.

ATTORNEY GENERAL OPINIONS

The Gulf Regional Planning Commission lacks authority to own property in which to maintain its offices. Hewes, III, Feb. 1, 2002, A.G. Op. #02-0025.

The employees of the Gulf Regional Planning Commission may become members of the Public Employees Retirement System, provided all the proper agreements are entered into with PERS. Estes, III, May 24, 2002, A.G. Op. #02-0283.

FINANCING PROVISIONS

SEC.
17-1-37. Financing provisions.

§ 17-1-37. Financing provisions.

(1) The governing authorities of each municipality and county may set aside, appropriate and expend moneys from the general fund to finance the provisions of Sections 17-1-1 through 17-1-27, inclusive.

(2) The governing authorities of each municipality and county may set aside, appropriate and expend moneys from the general fund to finance the provisions of Sections 17-1-31 through 17-1-35, inclusive.

SOURCES: Codes, 1942, § 2890.5, 2890.5-05; Laws, 1956, ch. 197, §§ 1-6; Laws, 1960, ch. 402; Laws, 1964, ch. 501, § 5; Laws, 1985, ch. 536, § 4; Laws, 1986, ch. 400, § 2, eff from and after October 1, 1986.

Cross References — County and municipal appropriations to planning and development districts, see § 17-19-1.

County taxation generally, see §§ 19-9-1 et seq.

Municipal taxation generally, see §§ 21-33-1 et seq.

Taxation and revenue generally, see §§ 27-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

In an action to enjoin the use of defendant's house as a beauty parlor, allegedly in violation of a protective covenant, it was no defense that the plaintiffs had not exhausted their administrative remedies in that they had not followed their prior objection to the defendant's successful application to the county board of supervisors for a use permit to its ultimate disposition, since the litigation arose from personal rights derived from a protective covenant, and a county board of supervisors is without authority, by the issuance of a use permit, to change or alter a solemn personal contract with regard to the use of land. Sullivan v. McCallum, 231 So. 2d 801 (Miss. 1970).

Under this section [Code 1942, § 2890.5] a county board of supervisors may act in conjunction with municipalities located in the county, or independently. Ridgewood Land Co. v. Simmons, 243 Miss. 236, 137 So. 2d 532 (1962).

RESEARCH REFERENCES

ALR. Zoning regulations as applied to dancing schools. 85 A.L.R.2d 1150.

Construction and application of zoning regulations in connection with bomb or fallout shelters. 7 A.L.R.3d 1443.

FACTORY MANUFACTURED MOVABLE HOMES

SEC.
17-1-39. Zoning ordinances relating to factory manufactured movable homes authorized.

§ 17-1-39. Zoning ordinances relating to factory manufactured movable homes authorized.

(1) For purposes of this section, the term "factory manufactured movable home" is defined as provided in Section 75-49-3, Mississippi Code of 1972.

(2) Any municipality or county of this state may adopt and enforce zoning or other land use regulations or ordinances relating to factory manufactured movable homes, including, but not limited to, regulations and ordinances which establish reasonable appearance and dimensional criteria for factory manufactured movable homes, provided that such regulations and ordinances do not have the effect of prohibiting factory manufactured movable homes which otherwise meet applicable building code requirements from being lawfully located in at least some part or portion of the municipality or county.

SOURCES: Laws, 1989, ch. 494, § 1, eff from and after passage (approved March 30, 1989).

JUDICIAL DECISIONS

1. Amendment to ordinance.

Amendment of a county zoning ordinance was proper pursuant to Miss. Code Ann. § 17-1-39 where the presumption that a political entity exercised its zoning power to further a legitimate purpose was not overcome; moreover, by association's own admission, the previous zoning ordinance encompassed greater disparate requirements for lot size than the amended ordinance, and under the previous ordinance any attempt by a developer to build a subdivision of manufactured housing required a variance, and that appeared unchanged by the amendment of the ordinance. Miss. Manufactured Hous. Ass'n v. Bd. of Supervisors, 878 So. 2d 180 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Validity and application of zoning regulations relating to mobile home or trailer parks. 42 A.L.R.3d 598.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence. 87 A.L.R.4th 294.

Validity of zoning laws setting minimum lot size requirements. 1 A.L.R.5th 622.

Am Jur. 25B Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Form 77 (complaint, petition, or declaration — by property owners — challenging municipal approval of mobile home park).

CHAPTER 2

Building Codes

Sec.

17-2-1. Certain counties required to enforce wind and flood mitigation requirements of nationally recognized codes and standards; counties and municipalities within the counties may choose not to be subject to the code requirements under certain circumstances.
17-2-3. Creation of Mississippi Building Codes Council; reconstitution of council; membership; appointment and terms; vacancies; meetings; quorum; adoption and amendment of discretionary statewide minimum codes; date of adoption of initial code; recommendations for mandatory statewide minimum codes.
17-2-5. Adoption of minimum codes by county board of supervisors or municipal governing authority; agreements for enforcement of codes.
17-2-7. Farm structures exempt from provisions of this chapter.
17-2-9. Certain other buildings, facilities and manufactured housing exempt from provisions of this chapter.

§ 17-2-1. Certain counties required to enforce wind and flood mitigation requirements of nationally recognized codes and standards; counties and municipalities within the counties may choose not to be subject to the code requirements under certain circumstances.

(1) The counties of Jackson, Harrison, Hancock, Stone and Pearl River, including all municipalities therein, shall enforce, on an emergency basis, all the wind and flood mitigation requirements prescribed by the 2003 International Residential Code and the 2003 International Building Code, as supplemented.

(2) Except as otherwise provided in subsection (4) of this section, emergency wind and flood building requirements imposed in this section shall remain in force until the county board of supervisors or municipal governing authorities, as the case may be, adopts as minimum mandatory codes the latest editions of the codes described in subsection (3)(a) of this section. Except as otherwise provided in subsection (4) of this section, the wind and flood mitigation requirements imposed by this section shall be enforced by the county board of supervisors or municipal governing authorities, as the case may be.

(3)(a) A county board of supervisors or municipal governing authorities, as the case may be, described in subsection (1) of this section shall adopt as minimum codes the latest editions of the following:

(i) International Building Code and the standards referenced in that code for regulation of construction within these counties. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption.

(ii) International Residential Code (IRC) and the standards referenced in that code are included for regulation of construction within these counties. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption, with the exception of Appendix J, Existing Buildings and Structures, which is hereby adopted by this reference.

(b) In addition to any other codes required under this section, a county board of supervisors or municipal governing authorities, as the case may be, described in subsection (1) of this section may adopt the latest editions of any of the following:

(i) Codes established by the Mississippi Building Code Council.

(ii) Other codes addressing matters such as electrical, plumbing, mechanical, fire and fuel gas.

(4) The provisions of this section shall go into effect thirty (30) days from April 14, 2006. However, within sixty (60) days after the provisions of this section go into effect, the board of supervisors of a county and/or the governing authorities of any municipality within a county, upon resolution duly adopted and entered upon its minutes, may choose not to be subject to the code requirements imposed under this section.

SOURCES: Laws, 2006, ch. 541, § 1, eff from and after passage (approved Apr. 14, 2006.)

ATTORNEY GENERAL OPINIONS

When the Governor signed House Bill 1406 (Laws of 2006, ch. 541), the provisions of Section 1 of HB 1406 (§ 17-2-1) became effective, and 30 days thereafter, Pearl River County was required to enforce on an emergency basis, by legislative mandate, the 2003 International Residential Code and the 2003 International Building Code as provided in Section 1 of HB 1406. Thus, the enactment of HB 1406 had the effect of superceding the county's adoption of the international codes. Cummings, Sept. 29, 2006, A.G. Op. 06-0436.

§ 17-2-3. Creation of Mississippi Building Codes Council; reconstitution of council; membership; appointment and terms; vacancies; meetings; quorum; adoption and amendment of discretionary statewide minimum codes; date of adoption of initial code; recommendations for mandatory statewide minimum codes.

(1) There is hereby created the Mississippi Building Codes Council. Each member of the council shall be appointed by the executive director of his respective professional association unless otherwise stated herein. Each member shall serve for a term of three (3) years and until a successor is appointed and qualifies. No person who has previously been convicted of a felony in this state or any other state may be appointed to the council. From and after July 1, 2009, all members of the council shall be residents of the State of Mississippi. The terms of the members serving on the council on April 26, 2011, shall expire on July 1, 2011. The council is hereby reconstituted and shall

consist of the following eleven (11) members with terms beginning on July 1, 2011:

(a) One (1) representative of the American Institute of Architects of Mississippi;

(b) One (1) representative of the Associated General Contractors of Mississippi;

(c) One (1) representative of the Mississippi Manufactured Housing Association;

(d) One (1) representative of the Building Officials Association of Mississippi;

(e) Two (2) representatives of the Home Builders Association of Mississippi;

(f) One (1) representative of the Associated Builders and Contractors of Mississippi;

(g) One (1) representative of the American Council of Engineering Companies of Mississippi;

(h) One (1) representative of the Mississippi Municipal League;

(i) One (1) representative of the Mississippi Association of Supervisors; and

(j) The Mississippi State Fire Marshal, or his designee, to serve ex officio, nonvoting.

(2) A vacancy must be filled in the manner of the original appointment for the unexpired portion of the term.

(3) Any member with unexcused absences for more than three (3) consecutive meetings shall be replaced by his sponsoring organization.

(4) The State Fire Marshal shall convene the first meeting of the reconstituted council before October 1, 2011, and shall act as temporary chairman until the council elects from its members a chairman and vice chairman. The council shall adopt regulations consistent with this chapter. A meeting may be called by the chairman on his own initiative, but must be called by him at the request of three (3) or more members of the council. Each member must be notified by the chairman in writing of the time and place of the meeting at least seven (7) days before the meeting. Four (4) members constitute a quorum. Each meeting is open to the public. An official decision of the council may be made only by a vote of at least two-thirds (⅔) of those members in attendance at the meeting.

(5) The council shall adopt by reference and amend only one (1) of the last three (3) editions of the following as discretionary statewide minimum codes:

(a) International Building Code and the standards referenced in that code for regulation of construction within this state. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption.

(b) International Residential Code (IRC) and the standards referenced in that code are included for regulation of construction within this state. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption, with the exception of Appendix J, Existing Buildings and Structures, which is hereby adopted by this reference.

(c) Other codes addressing matters such as electrical, plumbing, mechanical, fire and fuel gas.

(6) The initial code or codes adopted by this council under the provisions of this section shall be completed no later than July 1, 2007.

(7) Notwithstanding any other provision of law, the council shall not enact any ordinance, bylaw, order, building code or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling. However, the county boards of supervisors and municipal governing authorities may adopt, modify and enforce codes adopted by the council, including the adoption of codes which require the installation of fire protection sprinkler systems in any structure.

(8) On or before December 1, 2012, the council shall furnish to all members of the Legislature a report to be considered during the 2013 Regular Session that provides findings and recommendations for building and construction standards as the mandatory statewide minimum codes. The council shall make its recommendation from one (1) of the last three (3) editions of the following:

(a) International Building Code and the standards referenced in that code for regulation of construction within this state. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption.

(b) International Residential Code (IRC) and the standards referenced in that code are included for regulation of construction within this state. The appendices of that code may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption.

(c) Other codes addressing matters such as electrical, plumbing, mechanical, fire and fuel gas.

SOURCES: Laws, 2006, ch. 541, § 2; Laws, 2007, ch. 524, § 1; Laws, 2011, ch. 526, § 1; Laws, 2012, ch. 310, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2011 amendment rewrote (1); in (4), inserted "reconstituted" preceding "council" and "before October 1, 2011" thereafter in the first sentence, substituted "Four (4)" for "Fourteen (14)" in the next to last sentence; in (5), substituted "three (3)" for "two (2)"; and added (7).

The 2012 amendment substituted "initiative, but must" for "initiative and must" in the second sentence of (4); added (8); and made a minor stylistic changes.

§ 17-2-5. Adoption of minimum codes by county board of supervisors or municipal governing authority; agreements for enforcement of codes.

(1) Any county board of supervisors or municipal governing authority that adopts building codes after July 1, 2008, shall adopt as minimum codes any codes established and promulgated by the Mississippi Building Codes Council.

(2) Any county board of supervisors or municipal governing authority that has adopted construction codes published before January 1, 2000, shall, no later than July 1, 2010, adopt as minimum codes any codes established and promulgated by the Mississippi Building Codes Council.

(3) Any codes adopted by a board of supervisors or municipal governing authority under this section shall be enforced by the board of supervisors or municipal governing authority, as the case may be.

(4) Municipalities and counties may establish agreements with other governmental entities of the state or certified third-party providers to issue permits and enforce state building codes in order to provide the services required by Chapter 524, Laws of 2007. The council may assist in arranging for municipalities, counties or third-party providers the provision of services required by Chapter 524, Laws of 2007, if a written request from the governing authority of the county or municipality is submitted to the council.

SOURCES: Laws, 2006, ch. 541, § 3; Laws, 2007, ch. 524, § 2; Laws, 2008, ch. 412, § 1, eff from and after July 1, 2008.

§ 17-2-7. Farm structures exempt from provisions of this chapter.

(1) For purposes of this section, "farm structure" means a structure that is constructed on a farm, other than a residence or a structure attached to it, for use on the farm, including, but not limited to, barns, sheds and poultry houses, but not public livestock areas. For purposes of this section, "farm structure" does not include a structure originally qualifying as a "farm structure" but later converted to another use.

(2) The governing body of a county or municipality shall not enforce that portion of any building code established and/or imposed under Sections 17-2-1 through 17-2-5 that regulates the construction or improvement of a farm structure.

(3) The provisions of this section do not apply unless, before constructing or improving a farm structure, the person owning the property on which the structure is to be constructed files an affidavit with the county or municipal official responsible for enforcing the building code stating that the structure is being constructed as a farm structure. The affidavit must include a statement of purpose or intended use of the proposed structure or addition.

(4) This section does not affect the authority of the governing body of a county or municipality to issue building permits before an affidavit for the

construction or improvement of a farm structure is filed under subsection (3) of this section.

(5) The provisions of this section shall not apply to any floodplain management ordinances or regulations necessary for eligibility for the National Flood Insurance Program, and such floodplain management ordinances or regulations shall apply retroactively to any construction or improvement permit granted for any structure exempted under this section before May 22, 2012.

SOURCES: Laws, 2006, ch. 541, § 4; Laws, 2012, ch. 303, § 1; Laws, 2012, ch. 540, § 1, eff from and after passage (approved May 22, 2012.)

Joint Legislative Committee Note — Section 1 of Chapter 540, Laws of 2012, effective upon passage (approved May 22, 2012), amended this section. Section 1 of Chapter 303, Laws of 2012, effective upon passage (approved March 31, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 540, Laws of 2012, which contains language that specifically provides that it supersedes § 17-2-7 as amended by Laws of 2012, ch. 303.

Amendment Notes — The first 2012 amendment (ch. 303) added (5).

The second 2012 amendment (ch. 540) added "and such floodplain management ... before May 22, 2012" at the end of (5).

ATTORNEY GENERAL OPINIONS

Section 17-1-3 prohibits requiring the issuing of building permits and payment of building permit fees for farm buildings or other farm structures. Section 17-2-7 prohibits the enforcement of building codes, including the International Building Codes, on farm structures. However, such exemptions do not include farm residences. Cummings, Sept. 29, 2006, A.G. Op. 06-0436.

§ 17-2-9. Certain other buildings, facilities and manufactured housing exempt from provisions of this chapter.

(1) The governing authority of any county or municipality shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 that regulates the construction or improvement of industrial facilities that are engaged in activities designated as manufacturing (sectors 31-33), utilities (sector 22), telecommunications (sector 517), bulk stations and materials (sector 422710), crude oil pipelines (sector 486110), refined petroleum products pipelines (sector 486910), natural gas pipelines (sector 486210), other pipelines (sector 486990) and natural gas processing plants (sector 211112), under the North American Industry Classification System (NAICS).

(2) The governing authority of any county or municipality shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 which regulates the construction or improvement of buildings located on nonpublic fairgrounds or the construction or improvement of buildings located on the Neshoba County Fairgrounds in Neshoba County, Mississippi.

(3) The governing authority of any county or municipality shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 which regulates the construction or improvement of a private unattached outdoor recreational structure, such as a hunting or fishing camp. In order for a structure to qualify as a "hunting camp" or "fishing camp" under the provisions of this subsection, the owner must file with the board of supervisors of the county in which the structure is located his signed affidavit stating under oath that the structure is a hunting camp or fishing camp, as the case may be, that he is the owner or an owner of the camp and that the camp is located in an unincorporated area of the county within, near or in close proximity to land upon which hunting or fishing activities legally may take place.

(4) The governing authority of any county or municipality shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 which regulates the construction or improvement of manufactured housing built according to the Federal Manufactured Home Construction and Safety Standards Act.

(5) The governing authority of Pearl River County or any municipality within such county shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 which prohibits the use of or requires building permit approval for the use of salvage lumber or green cut timber in building construction provided such timber is for personal use and is not for sale.

(6) The provisions of this section shall not apply to any floodplain management ordinances or regulations necessary for eligibility for the National Flood Insurance Program, and such floodplain management ordinances or regulations shall apply retroactively to any construction or improvement permit granted for any structure exempted under this section before May 22, 2012.

SOURCES: Laws, 2006, ch. 541, § 5; Laws, 2007, ch. 524, § 3; Laws, 2012, ch. 303, § 2; Laws, 2012, ch. 540, § 2, eff from and after passage (approved May 22, 2012.)

Joint Legislative Committee Note — Section 2 of Chapter 540, Laws of 2012, effective upon passage (approved May 22, 2012), amended this section. Section 2 of Chapter 303, Laws of 2012, effective upon passage (approved March 31, 2012), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 540, Laws of 2012, which contains language that specifically provides that it supersedes § 17-2-9 as amended by Laws of 2012, ch. 303.

Amendment Notes — The first 2012 amendment (ch. 303) added (6).

The second 2012 amendment (ch. 540) added "and such floodplain management ... before May 22, 2012, at the end of (6).

Federal Aspects — Federal Manufactured Home Construction and Safety Standards Act, see 42 U.S.C.S. §§ 5401 et seq.

CHAPTER 3

Promotion of Trade, Conventions and Tourism

In General 17-3-1
Convention Bureaus 17-3-21

IN GENERAL

Sec.
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17-3-19. Action by municipality under Sections 17-3-9 through 17-3-19.

§ 17-3-1. Counties and municipalities may advertise resources.

The board of supervisors of any county in Mississippi, and the mayor and board of aldermen or board of commissioners of any municipality in the State of Mississippi, may in their discretion, set aside, appropriate and expend moneys, not to exceed one mill of their respective valuation and assessment for the purpose of advertising and bringing into favorable notice the opportunities, possibilities and resources of such municipality or county.

SOURCES: Codes, 1930, § 284; 1942, § 2982; Laws, 1926, ch. 267.

Cross References — Jurisdiction and general powers of boards of supervisors, see § 19-3-41.

Expenditures for advertising resources of counties in levee districts, see § 19-9-103.

Powers and duties of council, see § 21-5-9.

General powers of municipalities, see § 21-17-1.

Authority to aid and encourage establishment of industry by extension of tax exemptions, see § 21-19-43.

Municipality's authority to contribute to local fair associations, see § 21-19-51.

Advertising of municipal activities to advance its moral, financial and other interests, see § 21-19-61.

Regional tourism promotion councils, see §§ 57-27-1 et seq.

Travel and tourism in connection with publication of a vacation guide, see §§ 57-29-1, 57-29-3.

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If private entertainment group or company is not band or concert orchestra, no statutory authority exists for donations of municipal funds; however, municipal governing authorities do have discretionary authority to expend certain amount of municipal funds for purposes of advertising and bringing into favorable notice opportunities, possibilities and resources of municipality. Carter, Feb. 7, 1990, A.G. Op. #90-0069.

Counties have discretionary authority to appropriate and expend moneys, not to exceed one mill, for purposes of advertising opportunities, possibilities, and resources of county. Henley, May 16, 1991, A.G. Op. #91-0322.

If governing authorities of municipality find that city funds appropriated to Chamber of Commerce will be used for purpose of advertising and bringing into favorable notice opportunities, possibilities and resources of city, then city may appropriate funds to Chamber of Commerce for these purposes; whether funds appropriated to Chamber of Commerce for salary of employee are achieving proper purposes is factual question. McGee, Sept. 10, 1992, A.G. Op. #92-0694.

Providing office space in city hall to Chamber of Commerce is not contribution specifically for purposes of advertising pursuant to Section 17-3-1, and we find no authority for municipality to make that donation. Cooke Dec. 9, 1993, A.G. Op. #93-0857.

Mississippi Contract Procurement Center exists primarily to assist businesses in getting contracts and does not engage in advertising resources of particular municipality and therefore statute does not provide authority for municipality to contribute funds to Mississippi Contract Procurement Center. Cochran, March 30, 1994, A.G. Op. #94-0108.

While Section 17-3-1 authorizes expenditures for advertising, this statute does not authorize expenditures for landscaping or maintaining highways and state aid roads which are outside the corporate limits. Waller, June 22, 1995, A.G. Op. #95-0431.

Under Section 17-3-1, if the governing authorities find on the minutes that the expenditure of funds is for the purpose of advertising as contemplated by the statute, then the governing authorities may spend the funds for that purpose. Moore, August 9, 1996, A.G. Op. #96-0456.

The Board of supervisors of Alcorn County, Mississippi may only use the avails of the ad valorem tax and the proceeds from the issuance and sale of bonds, both as authorized in Chapter 996, Local and Private Laws of Mississippi, 1995, for the purposes therein stated, and has no authority to grant to the Siege and Battle of Corinth Commission any funds from any other source. Trapp, Jr., January 16, 1998, A.G. Op. #97-0812.

A municipality may not reimburse a group of citizens for materials used in constructing a concession stand in a city park for advertising purposes. Phillips, April 3, 1998, A.G. Op. #98-0127.

If the Mississippi State University campus is within the corporate limits of the City of Starkville, the city may contract with the university to provide city policemen to assist in crowd control at football games. Rutledge, July 31, 1998, A.G. Op. #98-0440.

If the governing authorities of a city find consistent with fact and spread upon the minutes that city funds appropriated to the Chamber of Commerce will be used for the purpose set forth in this section of advertising and bringing into favorable notice the opportunities, possibilities and resources of the city, then they may appropriate such funds to the Chamber of Commerce for these purposes; to ensure that funds appropriated to the Chamber of Commerce are used for the purposes of advertising, the city may reimburse the Chamber of Commerce after the expenditures are made and may require documentation that the funds were used for advertising. Mills, April 2, 1999, A.G. Op. #99-0156.

While a county does not have authority to make an annual unrestricted donation to the Boy Scouts or Girl Scouts, a county may spend funds for a specific project or event sponsored by the Boy Scouts or Girl Scouts that advertises the opportunities, possibilities, and resources of the county.

Carnathan, Oct. 27, 2000, A.G. Op. #2000-0649.

The construction of a road does not comport with the legislative purposes expressed in the statute. Chamberlin, Apr. 26, 2002, A.G. Op. #02-0216.

No authority can be found for any entity other than a county or a municipality to use the provisions of this section for advertising purposes. Griffith, Apr. 23, 2004, A.G. Op. 04-0156.

A county may acquire right-of-way for and construct sidewalks beside county roads and designate them as part of the county's park system for walking/jogging/bicycling/recreating such that funding would be permitted from the county general fund under § 55-9-1 or other related public park/recreation authority. Hollimon, June 4, 2004, A.G. Op. 03-0616.

While a municipality does not have authority to make an donation of funds to a non-profit organization, a municipality may spend funds for a specific project of the organization which advertises the opportunities, possibilities and resources of the municipality. Whether a specific project falls within the parameters of this section is a factual question which the mayor and board of aldermen must answer. Whites, July 23, 2004, A.G. Op. 04-0264.

Provided the necessary factual determinations required by this section are made by the board of supervisors, and that determination is duly recorded in the minutes, the purchase of advertising signs, such as a marquee calling attention to an agri-center, and the purchase of a sign to be placed within the facility itself would be statutorily authorized. The purchase of a sign solely for the purpose of selling advertising to private individuals or companies would not be permitted, but sale of excess space on the sign is permissible. Barry, Jan. 14, 2005, A.G. Op. 05-0007.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 184.

§ 17-3-3. Advertising, kind included, excluded.

Advertising pursuant to Section 17-3-1 shall include newspaper and magazine advertising and literature, publicity, expositions, public entertainment or other form of advertising or publicity, which in the judgment of such board or boards will be helpful toward advancing the moral, financial and other interests of such municipality or county; however, such advertising shall not include advertisements in publications sponsored by political parties, political committees or affiliated organizations, as such terms are defined in Section 23-15-801.

SOURCES: Codes, 1930, § 285; 1942, § 2983; Laws, 1926, ch. 267; Laws, 2012, ch. 457, § 1, eff from and after passage (approved Apr. 23, 2012.)

Amendment Notes — The 2012 amendment added "however, such advertising shall not include advertisements in publications sponsored by political parties, political committees or affiliated organizations, as such terms are defined in Section 23-15-801" to the end of the section.

Cross References — Municipality's authority to contribute to local fair associations, see § 21-19-51.

ATTORNEY GENERAL OPINIONS

The Board of Supervisors may select the agency and also the kind of advertising. If, in the judgment of the Board, it finds that a band will advertise the resources and possibilities of the county, or that it will be helpful toward advancing the moral, financial and other interests of the county, it may make the expenditures authorized therefor. Ops Atty Gen, 1937-39, p 136.

City may spend funds directly for advertising for Tate County SWEEPS (State-Wide Education Enforcement Prevention System) Task Force if mayor and board of aldermen make determination that expenditures "bring into favorable notice the opportunities, possibilities and resources" of municipality and if expenditures otherwise comply with requirements of statutes. Minton, April 19, 1990, A.G. Op. #90-0287.

Upon proper finding of fact by Mayor and Board of Aldermen, city of Hernando may contribute funds to DeSoto Council for purchase of signs to be placed in Hernando and throughout County marking trail of Hernando DeSoto's expedition; mayor and board of aldermen of Hernando should spread upon minutes of city government finding that this expenditure is for purpose of advertising and bringing into favorable notice opportunities, possibilities and resources of city and county. Douglas, August 23, 1990, A.G. Op. #90-0623.

While a county does not have authority to make an annual unrestricted donation to the Boy Scouts or Girl Scouts, a county may spend funds for a specific project or event sponsored by the Boy Scouts or Girl Scouts which advertises the opportunities, possibilities, and resources of the county. Carnathan, Oct. 27, 2000, A.G. Op. #2000-0649.

The construction of a road does not comport with the legislative purposes expressed in the statute. Chamberlin, Apr. 26, 2002, A.G. Op. #02-0216.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Legal Forms 2d, Advertising §§ 12:10-12:16 (advertising contract, general forms).

§ 17-3-5. Boards may cooperate with statewide movement.

In the expenditure of funds as provided, in section 17-3-1, the said board or boards may cooperate with any statewide movement or any state organization in putting over a statewide campaign or program.

SOURCES: Codes, 1930, § 286; 1942, § 2984; Laws, 1926, ch. 267.

§ 17-3-7. Municipalities and counties authorized to make appropriations in aid of fairs.

All municipalities, regardless of the form of government under which they operate, or any board of supervisors, shall have the power to appropriate money, not exceeding Twenty-five Hundred Dollars ($2500.00), annually, to aid in the payment of premiums and awards made and given by fairs or fair associations located, held and operated in such county. Such appropriations may be made in gross amounts, and paid upon specific awards made under such rules and regulations as may be prescribed by the municipal or county authorities.

SOURCES: Codes, 1930, § 287; 1942, § 2985; Laws, 1926, ch. 270.

Cross References — Municipality's authority to contribute to local fair associations, see § 21-19-51.

§ 17-3-9. Definitions for Sections 17-3-9 through 17-3-19.

As used in Sections 17-3-9 through 17-3-19, unless the text otherwise requires:

(a) "Municipality" means any county within the State of Mississippi which borders upon the Mississippi Gulf Coast and any city, town, supervisor's district, or other political entity created by the state located in whole or in part in any county bordering upon the Mississippi Gulf Coast or any combination of any of the above; any class one county having an area in excess of seven hundred twenty (720) but less than seven hundred twenty-five (725) square miles and having a total assessed valuation in excess of Eighty Million Dollars ($80,000,000.00), but not more than One Hundred Million Dollars ($100,000,000.00) according to the 1963 tabulation by the state tax commission and having a population according to the 1960 federal census in excess of sixty-five thousand (65,000) but less than seventy-five thousand (75,000), and any city, town, supervisor's district, or other political entity created by the state located in whole or in part therein; and any county wherein there are located two county sites in one supervisor district, said county sites being in different judicial districts, and any city, town, supervisor's district, or other political entity created by the state located in whole or in part therein.

(b) "Convention center" shall include but not be limited to the following described facilities or land and the improvements thereon having the common objective of promoting conventions, tourism and trade within the State of Mississippi such as a coliseum, auditorium, pavilion, galleries, hotels, motels, restaurants, clubs and other facilities of similar nature and character.

SOURCES: Codes, 1942, § 3374-192; Laws, 1970, ch. 464, § 1, eff from and after passage (approved April 6, 1970).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Authority to issue bonds to establish convention center, see § 17-3-15.

Receipt and disbursement of funds in establishing convention center, see § 17-3-17.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Amusements and Exhibitions §§ 19:31. (contracts relating to promotion and holding of exhibitions).

§ 17-3-11. Acquisition and use of land and other property for convention centers.

(1) Every municipality is authorized to acquire by any available funds lands, either within or without municipal corporate limits, in fee or a lesser estate for the purpose of establishing thereon a convention center. Any lands previously acquired by a municipality and not needed for any other municipal purpose may also be used for establishing thereon a convention center. Lands may be acquired for the purpose herein authorized by purchase, lease, gift, devise, dedication or any other lawful manner.

(2) A municipality, as it deems proper for the efficient and effective exercise of the powers and for the purposes defined under Sections 17-3-9 through 17-3-19, may either acquire property, real or personal, and may use any municipal property, real or personal, not otherwise required for a municipal purpose, all as hereinafter provided.

(3) The provisions of subsection (5) of this section notwithstanding, every municipality is authorized to plan, establish, develop, construct, enlarge, improve, maintain, equip and operate through the use of land and personal property as herein provided coliseums, amphitheaters, arenas, stadiums, auditoriums, pavilions, galleries or similar facilities to accommodate public meetings, gatherings, assemblies, conventions, or any like public gathering in which persons may lawfully assemble for a common lawful purpose, including but not limited to purposes which are in the nature of social, economic, political, religious, educational, cultural or entertainment and as members of a local, state of national economic, social, political or religious organization, or as members of the general public.

(4) Every municipality is authorized to do and perform all acts and things necessary to accomplish the purposes of Sections 17-3-9 through 17-3-19, and, in addition to the power herein conferred with respect to the facilities authorized to be planned, established, developed, constructed, enlarged, improved, maintained, equipped or operated by the municipality, may convey, grant, bargain, sell, lease and deliver by contract or deed on such terms and conditions as it may deem proper such facilities to others and on such terms and conditions found and determined by the governing authority of the municipality to best promote conventions, tourism and trade the same as the powers herein authorized with respect to lands conveyed or leased to others upon which to operate hotels, motels, restaurants, clubs and other similar facilities and businesses, including, but not limited to, the granting of certain concessions therein or in the vicinity thereof such as advertising, car rental, and what is generally known as short order and/or souvenir concessions.

(5) The power to use real or personal property authorized herein is hereby prohibited with respect to operation, maintenance, and engaging by a municipality in the business of hotels, motels, restaurants, clubs or any other business enterprises of similar nature and character, said uses being hereby expressly provided to be exercised only by private entrepreneurs on lease, grant or other conveyance of land and personal property by the municipality.

(6) It is expressly provided that no municipality shall be authorized to operate a hotel, motel, restaurant, club or any other such facility for lodging, full-course meals, retail sales of goods, wares, merchandise or services, all of which are only authorized with respect to private entrepreneurs upon lands herein authorized to be either acquired or used by the municipality to be made available to such private entrepreneurs by the municipality as herein provided.

SOURCES: Codes, 1942, § 3374-193; Laws, 1970, ch. 464, § 2, eff from and after passage (approved April 6, 1970).

Cross References — Authority to issue bonds to establish convention center, see § 17-3-15.

General powers of municipality, see § 21-17-1.

ATTORNEY GENERAL OPINIONS

Under the statute, the City of Vicksburg could (1) sublease a building and equipment to the Southern Cultural Heritage Foundation for nominal consideration for a period of two to ten years or some other negotiated term, (2) at the end of the lease period, transfer the property to the Foundation for nominal consideration with a reverter clause in the event the property ceased to be used as the Southern Cultural Heritage Center, (3) for a period of two or three years, allocate $150,000 each year to the Foundation to use for the improvement, maintenance, or operation of the Center or any other use as the Foundation deemed necessary, and (4) after the two or three year period of allocating $150,000 to the Foundation, continue to pay the debt service until the retirement of the debt. Thomas, September 11, 1998, A.G. Op. #98-0575.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Amusements and Exhibitions §§ 19:311.

§ 17-3-13. Powers and immunities of municipalities acting under Sections 17-3-9 through 17-3-19.

Any municipality undertaking to avail itself of the power and authority conferred by Sections 17-3-9 through 17-3-19 may sue and be sued; may, as hereinabove provided, defray the cost of the exercise of the power and authority conferred hereby with funds available to it as herein provided; may enter into leases or subleases for any period of time, as lessor or lessee or sublessor or sublessee of lands alone, or lands and facilities located thereon, whether the facilities are owned by the owner of the land, a lessee, sublessee or a third party and whether the municipality is a lessor, lessee or owner of the land. Any judgment, ex contractu or ex delicto, awarded against the municipality arising out of the exercise of the powers herein conferred shall be limited in levy and execution thereon to the assets held by the municipality by virtue of the power and authority of Sections 17-3-9 through 17-3-19.

Any municipality, as it deems proper for the efficient and effective exercise of the powers authorized under Sections 17-3-9 through 17-3-19, may enter into contracts for any period of time, with any person, firm, corporation or other legal entity or governmental agency, either state or federal, and may borrow money when deemed necessary and proper for the efficient and effective exercise of the powers authorized under Sections 17-3-9 through 17-3-19, but in so doing shall be prohibited from pledging the full faith and credit of the municipality. However, the revenues derived from the exercise of the powers authorized under Sections 17-3-9 through 17-3-19 may be irrevocably pledged for the repayment of any money borrowed pursuant to the provisions hereof.

SOURCES: Codes, 1942, § 3374-194; Laws, 1970, ch. 464, § 3, eff from and after passage (approved April 6, 1970).

Cross References — Authority to issue bonds to establish convention center, see § 17-3-15.

General powers of municipality, see § 21-17-1.

§ 17-3-15. Convention center bonds; general authority.

Any municipality is hereby authorized and empowered as it deems proper for the efficient and effective exercise of the powers authorized under Sections 17-3-9 through 17-3-19, to borrow money and to issue revenue bonds therefor solely for the purposes specified in Sections 17-3-9 through 17-3-19 and by the procedure provided in Sections 21-27-41, 21-27-45, 21-27-47, 21-27-51 and 21-27-53, Mississippi Code of 1972, provided further that no bond issued pursuant to Sections 17-3-9 through 17-3-19, shall constitute an indebtedness of a municipality within the meaning of any statutory or charter restriction, limitation or provision as provided in said Sections 21-27-41 and 21-27-45, Mississippi Code of 1972; the bonds may be issued without having been first approved by an election upon the question of the issuance thereof; the bonds shall be sold in such manner and upon such terms as the governing authorities of the municipality shall determine but in no event shall the interest cost to maturity exceed eight per centum (8%) per annum; if serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds; the bonds shall be exempt from all state, county, municipal and other taxation under the laws of the State of Mississippi with respect to both the principal and interest thereon and shall possess a status identical with bonds authorized by said Sections 21-27-41 and 21-27-45.

SOURCES: Codes, 1942, § 3374-195; Laws, 1970, ch. 464, § 4, eff from and after passage (approved April 6, 1970).

Cross References — County's issuing bonds generally, see §§ 19-9-1 et seq.

Municipality's issuing bonds generally, see §§ 21-33-301 et seq.

§ 17-3-17. Receipt and disbursement of funds under Sections 17-3-9 through 17-3-19.

Any municipality is authorized to accept, receive, receipt for, disburse, and expend federal and state monies and other monies, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of Sections 17-3-9 through 17-3-19. All federal monies accepted under this section shall be accepted and expended by the municipality under such terms and conditions as are prescribed by the United States and as are consistent with state law. All state monies accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the state.

SOURCES: Codes, 1942, § 3374-196; Laws, 1970, ch. 464, § 5, eff from and after passage (approved April 6, 1970).

Cross References — General powers of municipality, see § 21-17-1.

§ 17-3-19. Action by municipality under Sections 17-3-9 through 17-3-19.

Unless otherwise provided therein, any action taken by any municipality under Sections 17-3-9 through 17-3-19 shall be taken by the governing body of that municipality in the manner otherwise provided by law for an act taken by that municipality.

SOURCES: Codes, 1942, § 3374-197; Laws, 1970, ch. 464, § 6, eff from and after passage (approved April 6, 1970).

CONVENTION BUREAUS

Sec.
17-3-21. Authorization to establish.
17-3-23. Convention bureau boards.
17-3-25. Bonds of board members.
17-3-27. Board meetings and organization.
17-3-29. Powers of convention bureaus.
17-3-31. Special tax levy.
17-3-33. Certain local convention bureaus, tourism commissions and similar entities required to contract with private certified public accounting firm for annual audit.

§ 17-3-21. Authorization to establish.

Any county or municipality or any group composed of a county or counties and a municipality or municipalities located in a county bordering on the Gulf of Mexico, may by resolution spread upon the minutes of each participating governing body establish a convention bureau for the purpose of promoting the convention and tourist business in such counties or municipalities.

SOURCES: Laws, 1974, ch. 493, § 1, eff from and after passage (approved April 2, 1974).

Cross References — Promotion of trade, conventions and tourism generally, see §§ 17-3-1 et seq.

§ 17-3-23. Convention bureau boards.

In the event a convention bureau or bureaus are established hereunder, there shall be a convention bureau board which shall consist of three (3) members appointed by the governing authorities of each participating county or municipality. All of the members of said boards shall serve at the discretion of their respective appointing authority. Vacancies which shall occur shall be filled in the same manner as the original appointment.

SOURCES: Laws, 1974, ch. 493, § 2, eff from and after passage (approved April 2, 1974).

§ 17-3-25. Bonds of board members.

Before entering on the duties of the office, each appointed member of a convention bureau board shall enter into and give bond to be approved by the Secretary of State of the State of Mississippi in an amount not less than Fifty Thousand Dollars ($50,000.00) conditioned on the satisfactory performance of his duties. Such bond shall be payable to the State of Mississippi and in the event of a breach thereof, suit may be brought by the State of Mississippi for the benefit of the affected convention bureau. The premiums on said bonds shall be paid from funds received by the board under provisions of Sections 17-3-21 through 17-3-31.

SOURCES: Laws, 1974, ch. 493, § 3; Laws, 2009, ch. 467, § 3, eff from and after July 1, 2009.

§ 17-3-27. Board meetings and organization.

When a convention bureau has been established and the members of the board have been appointed and qualified as set forth herein, they shall, not more than thirty (30) days thereafter, hold an organizational meeting after giving not less than ten (10) days' notice of the time and place of such meeting by registered mail, postage prepaid, directed to each appointed member of such board at his regular address given to the Secretary of State immediately upon his qualification. Such notice shall be given by the appointing authority for the original organization of such convention bureau. Any county or municipality thereafter desiring to participate shall make appointments, and the members shall qualify in the same manner prescribed for the original board members. Upon being duly qualified, such new appointees, shall be given notice by the board as to the time, date and place of the next succeeding meeting, including a copy of any bylaws, rules or regulations and a summary of the actions taken by the board. At any meeting a quorum shall consist of a majority of the board.

The board shall elect a president and secretary, both of whom shall be members of said board, and shall adopt such rules and regulations as may govern the time and place for holding subsequent meetings, regular and special, and other rules and regulations not inconsistent with the provisions of Sections 17-3-21 through 17-3-31. The election of the president and secretary shall be made annually thereafter.

SOURCES: Laws, 1974, ch. 493, § 4, eff from and after passage (approved April 2, 1974).

§ 17-3-29. Powers of convention bureaus.

A convention bureau established hereunder shall have the authority to promote tourism and convention business. In this regard, the commission is empowered:

(1) To own, lease or contract for any equipment useful and necessary in the promotion of tourism and convention business;

(2) To receive and expend revenues from any sources;

(3) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets, subject to the prior approval of a majority of the appointing authority;

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in real or personal property or enter any interest therein wherever situated, subject to the prior approval of the appointing authorities; and

(5) To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the board is organized, and further, to appoint and employ agencies acting in its behalf for any or all of the aforementioned powers and responsibilities.

SOURCES: Laws, 1974, ch. 493, § 5, eff from and after passage (approved April 2, 1974).

ATTORNEY GENERAL OPINIONS

Disaster clean-up and recovery benefits tourism, is vital to the re-establishment of tourism in the area, and such efforts may be considered to be the "promotion" of tourism and conventions. Keating, Jan. 13, 2005, A.G. Op. 05-0620.

§ 17-3-31. Special tax levy.

Each participating governing body may annually levy a special tax, not to exceed one-quarter (¼) mill ad valorem tax, upon all taxable property located within its respective jurisdiction; the avails of such special levy to be used exclusively for the operations and activities of the convention bureau established herein. Such levy shall not be reimbursable under any homestead exemption law.

SOURCES: Laws, 1974, ch. 493, § 6, eff from and after passage (approved April 2, 1974).

§ 17-3-33. Certain local convention bureaus, tourism commissions and similar entities required to contract with private certified public accounting firm for annual audit.

Any convention bureau, local tourism commission or similar entity established under this chapter or any other law of the State of Mississippi, including any local and private law of the State of Mississippi, which receives funds from any special tax or levy imposed for the support of such bureau, commission or similar entity, shall annually hire a private certified public accounting firm to complete an audit of the revenues and expenditures of the bureau, commission or similar entity and its compliance with state law. A copy of the annual audit shall be provided to the State Department of Audit.

SOURCES: Laws, 2005, ch. 339, § 2, eff from and after Oct. 1, 2005.

CHAPTER 5

Jails, Waterworks and Other Improvements

Sec.
17-5-1. Joint construction, maintenance, and use of jail.
17-5-3. Counties and municipalities with military camps, etc., authorized to construct waterworks and sewage disposal systems.
17-5-5. Powers in regard to such systems.
17-5-7. Bonds authorized.
17-5-9. Rights of bondholders.
17-5-11. Sections 17-5-3 through 17-5-11 supplemental.
17-5-13. Power of county or municipality to apply for, receive and expend funds from federal government for railroad crossing improvements.
17-5-15. Power of county or municipality to lend or lease equipment.

§ 17-5-1. Joint construction, maintenance, and use of jail.

(1) The board of supervisors of any county of the state and the governing authorities of any municipality within such county may enter into a contract for the joint construction, expansion, remodeling and/or maintenance and equipping of a jail in such municipality, or within one (1) mile of the corporate limits thereof, and may issue bonds of both the county and such municipality in the manner provided by general statutes for the issuance of county and municipal bonds for such purposes, provided that in no event shall the municipality bear over fifty percent (50%) of the cost of constructing, expanding, remodeling and/or maintaining and equipping such jail. Such contract or future contracts may provide for the continued joint use of equipping, repairing, reconstructing and remodeling of such jail. Before issuing any bonds for the purposes herein set forth, the board of supervisors and the governing authorities of such municipality shall adopt a joint resolution declaring their intention to issue the same, which resolution shall state the amount and purposes of the bonds to be issued, and shall fix the date upon which action will be taken to provide for the issuance of such bonds. Said resolution shall be published once a week for at least three (3) consecutive weeks in a newspaper published in the county, the first publication of such notice to be made not less than twenty-one (21) days prior to the date fixed in such resolution and the last publication to be made not more than seven (7) days prior to such date. If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the county and municipality, respectively, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election upon the issuance of such bonds shall be called and held, and in such case such bonds or other evidences of indebtedness shall not be issued unless same are authorized by the affirmative vote of a majority of the qualified electors of said county and municipality, respectively, who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as is provided for the publication of the initial resolution, and said election shall be called, held and conducted and the returns thereof made, canvassed and declared in the same

manner as provided by Section 19-9-1 et seq., and Section 21-33-301 et seq., respectively. If no such petition be filed protesting against the issuance of said bonds, then the said board of supervisors and the governing authorities of the municipality shall have the authority to issue said bonds without an election.

(2) If the board of supervisors of a county and the governing authorities of a municipality enter into an agreement under the Regional Economic Development Act or an intergovernmental agreement approved by the Attorney General for the operation of a county jail, such county jail may be located outside the corporate limits of the municipality and is not subject to location restrictions in subsection (1).

SOURCES: Codes, 1857, ch. 59, art. 20; 1871, § 1367; 1880, § 2148; 1892, § 303; 1906, § 322; Hemingway's 1917, § 3695; 1930, § 215; 1942, § 2891; Laws, 1962, ch. 241; Laws, 1966, Ex Sess, ch. 27, § 1; Laws, 1974, ch. 350; Laws, 2000, 2nd Ex Sess, ch. 1, § 61, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — County acting generally with municipalities located within it, see § 17-1-5.

Sheriff having charge of county jail, see § 19-25-69.

Board of supervisors' establishing home and farm for paupers, see § 43-31-3.

Control over jails owned jointly by municipalities and counties, see § 47-1-49.

Regional Economic Development Act, see §§ 57-64-1 et seq.

ATTORNEY GENERAL OPINIONS

A municipality may furnish labor and all equipment necessary to install water/sewer lines and electrical services for a jail under an interlocal agreement as long as the municipality receives adequate consideration under the terms of the agreement. See Sections 47-1-39, 17-5-1 and 21-17-1. Doty, December 13, 1995, A.G. Op. #95-0834.

The extent and purposes of any contributions to a human resource agency designated by a county board of supervisors is governed by this chapter. Clayton, Oct. 29, 2004, A.G. Op. 04-0520.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 478.

§ 17-5-3. Counties and municipalities with military camps, etc., authorized to construct waterworks and sewage disposal systems.

(1) Counties or municipalities of such counties of the State of Mississippi having in whole or in part a national guard camp, United States army training camp, army air base or artillery range are hereby authorized and empowered, by resolution adopted by a majority vote of their governing bodies, (a) to acquire, lease, construct, improve or extend, within and without their territo-

rial limits, waterworks systems, sewer systems, sewage disposal systems, garbage disposal systems, rubbish disposal systems, or any one or any combination thereof; and (b) to borrow money and issue bonds therefor, pursuant to the provisions of Sections 17-5-3 through 17-5-11 without regard to the limitations and restrictions of any other law, for the purpose of financing the acquisition, leasing, construction, improvement or extension of any one or any combination of such systems or public works, which bonds shall be payable as to both principal and interest from revenues derived from the operation of any one or any combination of such systems or public works, as the same may be added to, extended or improved. Bonds issued pursuant to Sections 17-5-3 through 17-5-11 shall be subject to validation under the laws of this state, and nothing in the provisions of such sections shall operate to dispense with approvals respecting the authorized systems or public works by any state department or agency in accordance with law.

(2) The provisions of subsection (1) of this section authorizing the acquisition, leasing, construction, improvement or extension of garbage disposal systems and rubbish disposal systems shall not apply in any county having a land area of more than seven hundred (700) square miles and a population of more than ten thousand two hundred (10,200) but not more than ten thousand two hundred fifty (10,250) according to the 1990 federal census.

SOURCES: Codes, 1942, § 2987; Laws, 1942, ch. 195; Laws, 1994, ch. 457, § 1, eff from and after passage (approved March 17, 1994).

Cross References — Establishment and maintenance of garbage and rubbish disposal system, see §§ 19-5-17 et seq.

Municipality's power to create, maintain and operate waterworks and sewage disposal system, see § 21-27-23.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

Under Section 17-5-3, if a County is the home to either a national guard camp, in whole or in part, an army training camp, army air base or artillery range, then the County does possess the power of eminent domain to secure real property for the purpose of solid waste management; otherwise, it does not. See also Sections 19-5-17 and 17-5-5. Ainsworth, May 10, 1995, A.G. Op. #95-0118.

Counties are empowered to file eminent domain proceedings for the public purpose of acquiring land for the county to establish a landfill; a county may thereafter lease, but may not sell, the land to an individual or private entity for the purpose of establishing and operating a landfill under the applicable statutes for the disposal of county property. Meadows, Feb. 25, 2000, A.G. Op. #2000-0087.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 398, 400-403 et seq.

§ 17-5-5. Powers in regard to such systems.

Counties of this state, or the municipalities of such counties, are authorized and empowered (1) to own, operate, and maintain any one or any combination of the systems or public works described in Section 17-5-3; (2) to acquire property, real or personal, by contract, gift, grant, purchase, or the exercise of the power of eminent domain in connection with the acquisition, leasing, construction, improvement, extension, ownership, operation, maintenance, and financing of any one or any combination of such systems or public works; (3) to enter into contracts respecting the acquisition, leasing, construction, improvement, extension, ownership, operation, maintenance and financing of any one or any combination of such systems or public works; and (4) to establish, maintain, and collect rates, fees, and charges for the services, facilities, and commodities afforded by any one or any combination of such systems or public works. Such rates, fees, and charges shall be sufficient at all times to provide revenues (a) to pay the reasonable expenses of the operation and maintenance thereof; (b) for the establishment and maintenance of a bond retirement and interest payment fund sufficient to provide for the payment of the principal of and interest on any bonds or other obligations payable therefrom as the same become due and payable, including reasonable reserves for the payment of such principal and interest; and (c) for the establishment and maintenance of a reasonable reserve for future additions, extensions, and improvements to such systems or any combination thereof, as the case may be.

SOURCES: Codes, 1942, § 2988; Laws, 1942, ch. 195.

Cross References — Establishment and maintenance of garbage and rubbish disposal system, see §§ 19-5-17 et seq.

Municipality's power to create, maintain and operate waterworks and sewage disposal system, see § 21-27-23.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

Under Section 17-5-3, if a County is the home to either a national guard camp, in whole or in part, an army training camp, army air base or artillery range, then the County does possess the power of eminent domain to secure real property for the purpose of solid waste management; otherwise, it does not. See also Sections 19-5-17 and 17-5-5. Ainsworth, May 10, 1995, A.G. Op. #95-0118.

Counties are empowered to file eminent domain proceedings for the public purpose of acquiring land for the county to establish a landfill; a county may thereafter lease, but may not sell, the land to an individual or private entity for the purpose of establishing and operating a landfill under the applicable statutes for the disposal of county property. Meadows, Feb. 25, 2000, A.G. Op. #2000-0087.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 17-5-7. Bonds authorized.

Bonds authorized and issued pursuant to the provisions of Sections 17-5-3 through 17-5-11 may be issued in one or more series, may bear such date or dates, shall mature serially, not later than three years from the date thereof, at such time or times, not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding five per centum (5%) per annum, payable semi-annually, may be in such denomination, may be in such form, either coupon or registered, may be payable at such place or places, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption, with or without premium, and may be declared or become due before the maturity date thereof, as may be provided by the resolution authorizing their issuance. Such bonds and any interest coupons appertaining thereto shall be executed in accordance with the resolution providing for their authorization and issuance. Bonds issued under Sections 17-5-3 through 17-5-11 bearing the signatures of officers in office on the date of the signing thereof, as well as any interest coupons appertaining thereto, shall be valid and binding obligations, notwithstanding that before the delivery thereof any or all of the persons whose signatures or facsimile signatures appearing thereon shall have ceased to be officers of the county issuing the same. Bonds issued pursuant to the provisions of Sections 17-5-3 through 17-5-11 shall be negotiable for all purposes and shall possess all the qualities of a negotiable instrument. Bonds authorized and issued under the provisions of Sections 17-5-3 through 17-5-11 shall be sold and delivered only to the lowest bidder at public sale after notice thereof has been published in accordance with a motion, order, or resolution of the county proposing their issuance and sale, which notice shall be published at least one time, not less than ten days prior to the date fixed for the holding of such public sale, in a daily newspaper published and circulating in the State of Mississippi. Any such bonds may be sold to the United States of America at private sale in furtherance of any loan or grant contract which may be entered into by and between the county proposing to issue such bonds and the United States. The said bonds shall not be sold for less than their par value plus accrued interest.

SOURCES: Codes, 1942, § 2989; Laws, 1942, ch. 195.

Cross References — County's issuing bonds generally, see §§ 21-33-301 et seq.
Municipality's issuing bonds generally, see §§ 21-33-301 et seq.
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 17-5-9. Rights of bondholders.

Any holder or holders of bonds issued pursuant to the provisions of Sections 17-5-3 through 17-5-11 shall have the right, in addition to all other rights, by mandamus, suit, action, or other proceeding in any court of competent jurisdiction to enforce his or their rights against the county issuing such bonds, and in the case of a default in the payment of the principal of or interest on any such bonds, to the appointment of a receiver or trustee who shall have the power to enter upon and take possession of the system, or systems, the revenues of which are pledged to the payment of such bonds, and to operate and maintain the same, to prescribe and collect rates, fees, or charges in connection with such operation and maintenance, to apply all revenues thereof and to do all things as and in the same manner as the county itself might do. No such receiver or trustee shall have the right to sell any such system or systems or any substantial portion thereof.

SOURCES: Codes, 1942, § 2990; Laws, 1942, ch. 195.

§ 17-5-11. Sections 17-5-3 through 17-5-11 supplemental.

The powers conferred by Sections 17-5-3 through 17-5-11 shall be in addition and supplemental to, and the limitations hereof shall not affect, the powers conferred by any other law; and the powers conferred by Sections 17-5-3 through 17-5-11 are not in substitution for the powers conferred by any other law.

SOURCES: Codes, 1942, § 2991; Laws, 1942, ch. 195.

Cross References — General powers of boards of supervisors, see § 19-3-41.
General powers of a municipality, see § 21-17-1.
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 17-5-13. Power of county or municipality to apply for, receive and expend funds from federal government for railroad crossing improvements.

The board of supervisors of any county and the governing authority of any municipality shall have the power and authority to apply for, receive and expend grants, loans or other funds from the federal government or any department or agency thereof for use in connection with the relocation or grade separation of railroad lines to eliminate grade level railroad crossings.

SOURCES: Laws, 1979, ch. 494, § 1, eff from and after July 1, 1979.

§ 17-5-15. Power of county or municipality to lend or lease equipment.

The governing authorities of any county and the governing authorities of any municipality, are each authorized, in their discretion, upon order duly adopted and entered upon their official minutes, to lend to or to enter into leases with other counties or municipalities for the use of county-owned or municipally owned equipment and operators of such equipment. Such equipment and operators may be lent or leased for such amount and in accordance with such terms and conditions as the governing authorities may prescribe; however, such equipment and operators may be used only in the performance of public projects of a county or municipality. The lending or lease agreements also may include an equipment operator's fee equal to the average hourly salary that is paid to all operators of such county-owned or municipally owned equipment by the county or municipality that lends or leases the equipment. Proceeds from the lending or leasing of such equipment shall be deposited into the road and bridge fund of the county or the municipal general fund, as the case may be.

SOURCES: Laws, 1997, ch. 331, § 1, eff from and after July 1, 1997.

ATTORNEY GENERAL OPINIONS

Although the statute allows a county to lend or lease county equipment to another county or municipality, there is no authority for a sheriff or county to loan a county vehicle to a probation officer who is an employee of a state entity. Bryan, April 10, 1998, A.G. Op. #98-0177.

Provided a municipality has complied with all the procedural requirements of Section 21-9-11, a county has the authority to lend equipment and operators to the municipality to perform demolition work. With specific statutory authority such as that found in this section, there would be no requirement to enter into an Interlocal Cooperation Agreement to perform the work. McWilliams, July 25, 2003, A.G. Op. 03-0372.

Under the authority of this section counties are empowered to enter into an agreement whereby one county as the providing county will use its equipment and operators to maintain an isolated road in the other county and the recipient county will reimburse the providing county for expenses incurred. Smith, Apr. 2, 2004, A.G. Op. 04-0120.

CHAPTER 7

Removal of Local Governments in Emergencies

Sec.	
17-7-1.	Removal of sites of government in emergency resulting from natural disaster, enemy attacks, etc.
17-7-3.	Exercise of governmental powers at temporary location.
17-7-5.	Provisions effective notwithstanding conflict with other laws.

§ 17-7-1. Removal of sites of government in emergency resulting from natural disaster, enemy attacks, etc.

(1) Whenever, due to an emergency resulting from a natural disaster, the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of municipal and county governments or any subdivisions thereof at the regular or usual place or places thereof, the governing body of each political subdivision of this state may meet at any place within or without the territorial limits of such political subdivision on the call of the presiding officer or any two (2) members of such governing body, and shall proceed to establish and designate by ordinance, resolution or other manner, alternate or substitute sites or places as the emergency temporary location, or locations, of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. Such sites or places may be within or without the territorial limits of such political subdivision and may be within or without this state.

(2) For the purposes of this chapter, "natural disaster" means a natural disaster as declared by the Governor.

SOURCES: Codes, 1942, § 2874-01; Laws, 1960, ch. 187, § 1; Laws, 2005, 5th Ex Sess, ch. 4, § 1, eff from and after Aug. 29, 2005.

Cross References — Initial meeting following election of new board of supervisors and its organization, see § 19-3-7.

Regularly scheduled meetings of boards of supervisors, see §§ 19-3-11, 19-3-13.

Duration of boards of supervisors' meetings, see § 19-3-17.

Special, adjourned or emergency meetings of boards of supervisors, see § 19-3-19.

Jurisdiction and general powers of boards of supervisors, see § 19-3-41.

Regularly scheduled meetings of board of aldermen, see § 21-3-19.

Calling of special meetings of board of aldermen, and notice thereof, see § 21-3-21.

Powers and duties of council, see § 21-5-9.

Regular and special meetings of council, see §§ 21-5-13, 21-7-9, 21-9-39.

General powers of municipalities, see § 21-17-1.

General powers of governing authorities of municipalities, see § 21-17-5.

Mayor's duty to notify Governor of disaster or other grave emergency, see § 33-7-301.

Civil defense law, see §§ 33-15-1 et seq.

§ 17-7-3. Exercise of governmental powers at temporary location.

During the period when the public business is being conducted at the emergency temporary location, or locations, the governing body and other officers of municipal and county governments of this state shall have and possess and shall exercise, at such location, or locations, all of the executive, legislative and judicial powers and functions conferred upon such body and officers by or under the laws of this state. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.

SOURCES: Codes, 1942, § 2874-02; Laws, 1960, ch. 187, § 2, eff from and after passage (approved May 11, 1960).

Cross References — Jurisdiction and general powers of boards of supervisors, see § 19-3-41.

General powers of a municipality, see § 21-17-1.

Governor's authority to order into active state duty the organized and unorganized militia, see §§ 33-5-9, 33-7-301.

Mayor's duty to notify governor of disaster or other grave emergency, see § 33-7-301.

Civil defense law, see §§ 33-15-1 et seq.

Municipalities establishing local organizations for civil defense, see § 33-15-17.

§ 17-7-5. Provisions effective notwithstanding conflict with other laws.

The provisions of this chapter shall be effective in the event it shall be employed notwithstanding any statutory charter or ordinance provision to the contrary or in conflict herewith.

SOURCES: Codes, 1942, § 2874-03; Laws, 1960, ch. 187, § 3, eff from and after passage (approved May 11, 1960).

CHAPTER 9

Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands

Sec.
17-9-1. Powers of governing authorities of counties and municipalities.
17-9-3. Bonus consideration, delay drilling rentals, term, and royalties; rights of lessees.
17-9-5. Terms permissible in mineral lease.
17-9-7. Payment of bonus consideration, delay drilling rentals and royalties.
17-9-9. Chapter inapplicable to sixteenth section or in lieu lands.

§ 17-9-1. Powers of governing authorities of counties and municipalities.

Subject to the provisions of this chapter, the boards of supervisors of each county and the mayors and boards of aldermen, or mayors and councilmen, as the case may be, of each municipal corporation are hereby authorized and empowered, in their discretion, to lease in the name of the county or municipal corporation any or all lands or minerals owned by the county or by the municipality for oil, gas and mineral exploration and development, upon such terms and conditions and for such consideration as the boards of supervisors or the mayors and the boards of aldermen or the mayors and councilmen, in their discretion, shall deem proper and advisable.

SOURCES: Codes, 1942, § 2892-01; Laws, 1946, ch. 185, § 1.

Cross References — County acting generally with municipalities located within it, see § 17-1-5.

Mineral leases of state lands, see §§ 29-7-1 et seq.

Cooperative development and operation of oil and gas accumulations, see § 53-3-51.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Mines and Minerals §§ 1, 31, 32, 168-175, 187, 213.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 493, 494.

12B Am. Jur. Legal Forms 2d, Mines and Minerals §§ 175:234 et seq. (mining leases).

CJS. 58 C.J.S., Mines and Minerals §§ 171, 204, 227-232, 235, 241, 278-292.

73B C.J.S., Public Lands §§ 249, 287-295.

§ 17-9-3. Bonus consideration, delay drilling rentals, term, and royalties; rights of lessees.

No lease authorized by this chapter shall be made:

(a) For an original bonus consideration of less than One Dollar ($1.00) per acre,

(b) For a delay drilling rental of less than One Dollar ($1.00) per acre per annum,

(c) For a primary term of more than six years and as long thereafter as oil, gas or other mineral is being produced from the leased premises or as long thereafter as lessee shall conduct drilling, mining, producing or other operations and during the production of oil, gas, sulphur or other mineral resulting therefrom,

(d) For royalties of less than

1. On oil, one-eighth (⅛) of that produced and saved from the leased premises;
2. On gas, including casinghead gas or other gaseous substances, produced from the leased premises and sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth (⅛) of the amount realized from such sale;
3. On sulphur mined and marketed, the royalty shall be Fifty Cents (50¢) per long ton;
4. On all other minerals mined and marketed one-tenth (⅒) either in kind or value at the well or mine at lessee's election.

Lessee shall have free use of oil, gas, coal, and water from the leased premises, except water from lessor's wells, for all operations thereunder, and the royalty on oil, gas and coal shall be computed after deducting any so used. Where the interest to be leased by a county or municipality is less than the full and undivided fee simple estate, then the bonus consideration, delay drilling rental and royalties required by this section may be reduced in the proportion which the interest of the county or municipality bears to the whole and undivided fee. Any such oil, gas and mineral lease may provide that where the production from a well producing gas or gas with well distillate or condensate only, is not sold or used, lessee may pay as royalty an annual amount equal to the amount of the drilling delay rental, and if such payment is made, it will be considered that such well is producing for every purpose thereunder.

SOURCES: Codes, 1942, § 2892-01; Laws, 1946, ch. 185, § 2.

§ 17-9-5. Terms permissible in mineral lease.

Any such oil, gas and mineral lease may provide that the lessee therein shall have the right and power to pool and consolidate the land covered by said lease in its entirety, or as to any stratum or strata or any portion or portions thereof, with other lands and leases in the immediate vicinity thereof, for the purpose of joint development and operation of the entire consolidated premises as a unit, in which event the lessor in such lease shall share in the royalty on oil and gas produced from said consolidated tract in such manner as the boards of supervisors of the county or the mayors and boards of aldermen or the mayors and councilmen of a municipal corporation, in their discretion, may determine. Said lease also may include such other general provisions as are customary and proper for the protection of the rights of the lessor and of the lessee of the leased premises and as are not inconsistent or in conflict with the provisions of this chapter.

SOURCES: Codes, 1942, § 2892-01; Laws, 1946, ch. 185, § 3.

§ 17-9-7. Payment of bonus consideration, delay drilling rentals and royalties.

The bonus consideration, delay drilling rentals, and royalties accruing under any lease executed with the authority of this chapter shall be paid by the lessee to a county depository to the credit of the county or to a municipal depository to the credit of the municipal corporation, said depository to be selected and designated in the order authorizing said lease, and all of said funds so accruing shall go into the general fund of the county or municipality, as the case may be.

SOURCES: Codes, 1942, § 2892-01; Laws, 1946, ch. 185, § 4.

§ 17-9-9. Chapter inapplicable to sixteenth section or in lieu lands.

This chapter shall not apply to sixteenth section lands or in lieu lands.

SOURCES: Codes, 1942, § 2892-01; Laws, 1946, ch. 185, § 5.

Cross References — Sixteenth sections and in lieu lands generally, see §§ 29-3-1 et seq.

RESEARCH REFERENCES

CJS. 73B C.J.S., Public Lands §§ 115-118, 188, 189.

CHAPTER 11

Gulf Regional District Law

Sec.
17-11-1. Short title.
17-11-3. Definitions.
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17-11-9. Oath of office.
17-11-11. Association by county or city with the district.
17-11-13. Withdrawal by county or city from the district.
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17-11-25. Implementation of regional projects.
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17-11-53. District is a state agency and instrumentality.
17-11-55. Suits involving district and associated members.
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§ 17-11-1. Short title.

This chapter may be referred to as the "Gulf Regional District Law."

SOURCES: Codes, 1942, § 9054-71; Laws, 1971, ch. 517, § 21, eff from and after passage (approved April 14, 1971).

Cross References — Governor's proclamation formally organizing the governing body of the district, see § 17-11-17.

Budget for operation, maintenance and support of the district, see § 17-11-19.

Expenditure of public funds, issuance of bonds, and mortgaging of property for district purposes, see §§ 17-11-35 et seq.

Limitations on the power and authority of the district, see § 17-11-59.

§ 17-11-3. Definitions.

When used in this chapter, the following words and phrases shall have the meaning ascribed to them hereby, except where the context clearly describes and indicates a different meaning:

(a) Person: Any individual, firm, co-partnership, joint venture, association, corporation estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) District: The Gulf Regional District, as an agency and instrumentality of the State of Mississippi.

(c) Public agency: Any county, municipal corporation, school district, utility district, port authority, port development commission, port commission, housing commission or authority, agency of any county, municipal corporation, or of the state, or any combination thereof.

(d) City: An existing municipal corporation of the State of Mississippi; or one hereinafter incorporated.

(e) Region: The geographical area of such of the counties bordering on the Gulf of Mexico or contiguous to any county bordering on the Gulf of Mexico as shall have elected to come within the provisions of this chapter and join the district under the provisions hereof.

(f) Regional: The entire area within the region or such contiguous area thereof as may be designated by the governing body of the district.

(g) Project: Any undertaking, purpose, service, or program, governmental or corporate, authorized to be performed by any public agency, under the laws of the State of Mississippi, including but not limited to the acquisition, leasing or purchasing of property, real, personal or mixed, and the construction, reconstruction, rehabilitation or improvement thereof.

SOURCES: Codes, 1942, § 9054-51; Laws, 1971, ch. 517, § 1, eff from and after passage (approved April 14, 1971).

§ 17-11-5. Declaration of purpose.

The Gulf Regional District is hereby created as an agency and instrumentality of the State of Mississippi for the purpose of encouraging the voluntary association of local communities and political entities of the state within the region, and for the purpose of acting as a unified coordinating unit structured to solve common areawide problems by mutual cooperation within the framework of local governmental control.

SOURCES: Codes, 1942, § 9054-52; Laws, 1971, ch. 517, § 2, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-7. Composition of governing body of district; terms of office.

The governing body of the district shall consist of:

(a) The presidents of the boards of supervisors of each county and the mayors of each city within the region electing to associate as a member of the district, each to serve a term concurrent with their respective elective terms of office. In event of the inability of the president of the board of supervisors or a mayor of a city to attend any meeting, he may designate in writing any other member of the board of supervisors or the governing body of such city to attend such meeting, and to vote for and on behalf of such county or city.

(b) Three members to be appointed by the Governor from qualified electors within the region. The initial appointment of one member shall be for a period of one year, one member for a period of two years, and the third member for a period of three years. Thereafter, all such appointments shall be for a period of four years. Each appointment shall be made from a list of at least three qualified persons submitted to the Governor by the elected official members of the governing body at least thirty days prior to the vacancy.

(c) Four members from the qualified electors in the region to be appointed by a vote of two-thirds (⅔) of the governing body of the district. However, at no time shall the number of appointive members of the district as provided in subsections (b) and (c) of this section be greater than the number of cities and counties then associated with the district. The initial appointment of one member shall be for a period of one year, one member for a period of two years, one member for a period of three years and one member for a period of four years. Thereafter, all such appointments shall be for a period of four years.

(d) The governing body of the district may, in its discretion, designate and appoint ex-officio and nonvoting members to the governing body of the district from such public agencies within the region as the governing body of the district may deem desirable.

SOURCES: Codes, 1942, § 9054-53; Laws, 1971, ch. 517, § 3, eff from and after passage (approved April 14, 1971).

§ 17-11-9. Oath of office.

All voting members of the governing body of the district shall be qualified electors within the region, and, except as to those members who already hold public office under the laws of this state, shall take the oath of office required under Section 268 of the Constitution of the State of Mississippi.

SOURCES: Codes, 1942, § 9054-54; Laws, 1971, ch. 517, § 4, eff from and after passage (approved April 14, 1971).

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. Legal Forms 2d, Public Officers, §§ 213:59-213:60 (official oath).

§ 17-11-11. Association by county or city with the district.

(1) In the event any county or city within the region desires to become a member of the district, such county or city shall so indicate by proper resolution of its governing body declaring this intention. Such resolution shall contain notice that an election will be held to permit the qualified electors of such county or city to decide if they desire to become associated with the district. Such election shall be held and conducted by the election commissioners of the county or city in accordance with the general laws governing elections, and only qualified electors as reside within the county or city shall be entitled to vote in such election. Such resolution shall set forth the time, place or places, and purpose of such election, which shall be published by the clerk of the governing body of such county or city for the time and in the manner required by law. The ballots to be prepared and used at said election shall be in substantially the following form:

FOR associating with the Gulf Regional District ( )

AGAINST association with the Gulf Regional District ( )

Voters shall vote by placing a cross mark (x) or a check mark (√) opposite their choice.

If a majority of those voting in such election favor associating with the said district, then in such event the resolution of the county or city shall become operative and that county or city shall become a member of the district.

A resolution of the governing body of all such cities and counties as provided herein indicating its intention to or not to become a member of the district shall be adopted on or before February 1, 1972.

(2) If, in the event the governing authorities adopt a resolution indicating its intention not to become a member of the district, within thirty days from the adoption of said resolution ten percent (10%) of the qualified electors of such county or city or fifteen hundred (1,500) qualified electors of such county or city, whichever shall be the lesser number, shall file written petitions with the governing authorities of such county or city before the date specified as aforesaid in favor of becoming associated as a member of the district, then the governing bodies of such county or city shall call an election on the question of whether or not such county or city shall become associated as a member of such district. Such election shall be held and conducted by the election commissioners of the county or city as nearly as may be in accordance with the general laws governing elections as hereinbefore provided.

SOURCES: Codes, 1942, § 9054-55; Laws, 1971, ch. 517, § 5, eff from and after passage (approved April 14, 1971).

§ 17-11-13. Withdrawal by county or city from the district.

In the event any county or city within the region desires to withdraw from the district, having previously voted to become associated with such district as provided in Section 17-11-11, and at least six months has elapsed since the date the election was held for becoming associated with the district as provided in said section, such county or city shall follow the same procedure for withdrawing from the district as that followed for becoming associated with the district. Withdrawal from said district may also be initiated by petition in the same manner as provided in said section for the election for associating with said district.

SOURCES: Codes, 1942, § 9054-56; Laws, 1971, ch. 517, § 6, eff from and after passage (approved April 14, 1971).

§ 17-11-15. Interim organization of district.

Prior to July 20, 1971, the Governor shall appoint the members of the governing body of the district required to be appointed by him under this chapter. Until at least three counties and/or cities within the region have elected to become associated as members of the district as provided in this chapter, the members of the governing body of the district shall constitute an interim body, and their powers and duties shall be limited to the following:

(a) To make a determination of all factors that relate to the long-range development of the affected area and to correlate such factors to the economy and development of the entire state.

(b) To explore all available avenues of assistance, both public and private, and to bring into focus the aims, aspirations, and needs of our people.

(c) To make specific recommendations of the most efficient and effective roles that should be played by local and state governments in cooperation with the federal government and private interests, to the end that the total resources of all might be mobilized swiftly and decisively to accomplish this objective.

(d) To recommend a comprehensive plan for the accomplishments of the maximum long-range development of the area's recreational, cultural and economic life.

SOURCES: Codes, 1942, § 9054-57; Laws, 1971, ch. 517, § 7, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-17. Official organization of district.

When at least three cities and/or counties within the region have elected to become associated as members of the district in the manner provided in this chapter, and the attorney general has reviewed the official proceedings of the governing bodies of such counties and/or cities and has certified to the Governor that such counties and/or cities have elected to become associated as members of the district in the manner required by this chapter, then the Governor within fifteen days after such certification shall issue a proclamation declaring that such district has been lawfully organized with the powers as set forth in Section 17-11-15, and that it is vested with all the additional powers, rights, and duties conferred on it by this chapter. The Governor shall, in such proclamation, fix a date, time and place, within the region, for the formal organization of the governing body of such district.

SOURCES: Codes, 1942, § 9054-58; Laws, 1971, ch. 517, § 8, eff from and after passage (approved April 14, 1971).

§ 17-11-19. Budget; administrative support of district.

Upon the Governor issuing such proclamation as is provided for in Section 17-11-17, the governing body of the district, as constituted in this chapter, shall meet and adopt an annual budget for the operation, maintenance and support of the district. The funds for the administrative support of the district shall be apportioned equally on an annual basis of not more than Fifty Cents (50¢) per capita of the population of each associated member of the district, according to the last official federal census. If a city associated with the district is within a county which is also associated with the district, the city and county shall each pay not more than Twenty-five Cents (25¢) for the residents of such city. Such amount may be paid by each associated member from its general or surplus funds on or before April 1st of each calendar year. The governing body of the district may from time to time revise or amend the budget of the district.

SOURCES: Codes, 1942, § 9054-59; Laws, 1971, ch. 517, § 9; Laws, 1986, ch. 400, § 3, eff from and after October 1, 1986.

§ 17-11-21. General powers of district.

(1) The district shall be authorized and empowered as follows:

(a) To adopt rules or procedures for the regulation of its affairs, to set forth policies and procedures for the conduct of its business, including the number of members sufficient to constitute a quorum, and to appoint, from among its members, a chairman, vice-chairman, and secretary to serve annually; such chairman may be subject to re-election.

(b) To fix the compensation of the members of the governing body of the district, other than elective officers who may be members of such governing body, for their attendance at meetings of such governing body, such compensation not to exceed Twenty-two Dollars and Fifty Cents ($22.50) per meeting, and to allow such members their necessary travel expenses within the limits fixed by law for state employees.

(c) To adopt a seal, and to retain and keep minutes of its meetings in a firmly bound minute book, in which all actions taken by the commission about its business shall be recorded.

(d) To maintain offices at such place or places as it may designate, and meet at regular times at least two times each year. On written request of any two voting members of the district, requesting a special meeting of the governing body of the district, addressed to the office of the executive director, and delivered by first class mail, the executive director shall notify all members by first class mail of the convening of a special meeting of the members at a time not more than ten days from the receipt of such notice, at a place most convenient for such meeting within the district, and for the consideration of the matter giving rise to the convening of such meeting. The members shall only consider the matters touching the convening of such special meeting, and may recess from day to day, or place to place.

(e) To employ and to compensate an executive director who may serve as secretary, and such other personnel, consultants, and technical and professional assistants as shall be necessary to exercise the powers and perform the duties set forth in this chapter.

(f) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. The executive director shall be the duly authorized individual to execute contracts on behalf of said district, upon duly and properly entered resolution of said district so authorizing him to enter and execute said contract.

(g) To hold public hearings and sponsor public forums in any part of the region whenever the district deems it necessary or useful in the execution of its functions.

(h) To accept and receive, in the furtherance of its functions, funds, grants and service from the federal government or its agencies, from departments, agencies and instrumentalities of state, municipal or local governments and from private or civil sources.

(i) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county, state or public agency, or other public or private bodies, corporations or persons, and to receive and expend federal funds.

(2) The broad general powers granted the Gulf Regional District in this chapter shall not in any way conflict with the objectives and services of the Southern Mississippi Economic Development District, Inc., or any other public agency.

SOURCES: Codes, 1942, § 9054-60; Laws, 1971, ch. 517, § 10, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-23. Duties and responsibilities of district.

(1) The district shall have the responsibility and is granted wide latitude and broad authority to:

(a) Coordinate all activities, in planning for the redevelopment of the region;

(b) Provide a mechanism for the solution of areawide problems;

(c) Develop more effective lines of communication by and between local, regional, state and federal governments and agencies;

(d) Detail the program for the long-term development of the region;

(e) Develop and continually update comprehensive regional and associated regional plans for the district;

(f) Provide for the marshalling of the region's natural and human resources;

(g) Provide additional planning assistance to any public agency;

(h) Undertake and provide for the financing of any regional project for and on behalf of any public agency, which any such public agency may be empowered to undertake in its or their right by law;

(i) Enter into contracts with any public agency or any federal agency or private persons for the performance of any project within the region.

(2) The powers, duties and responsibilities set out in subsection (1)(a) through (i) of this section shall be subject to the express limitation that no such rights, powers or duties shall be undertaken or exercised by the district except at the request of and with the consent of the public agency involved in any approved project.

SOURCES: Codes, 1942, § 9054-61; Laws, 1971, ch. 517, § 11, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-25. Implementation of regional projects.

The district is authorized and empowered to consider, plan, propose, and at the request of and with the consent of the public agency involved in such project, to provide for the implementation of any approved regional project. The district may determine and establish priorities for the consideration of regional projects, and shall give primary attention to those projects related to rehabilitating those areas of the region devastated by disaster, to safeguard the lives and promote the safety of the people within the region, and for the protection of property from future disaster.

SOURCES: Codes, 1942, § 9054-62; Laws, 1971, ch. 517, § 12, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-27. Feasibility studies.

Any public agency may request the district to approve a regional plan for any project and for such purpose is hereby authorized to appoint competent consultants, engineers and/or other technical personnel, to be approved by the district, to prepare an analysis and feasibility study of such proposed project, which analysis shall include the plan of operation, the financing to be provided by each public agency and the source of all anticipated revenue, estimated expenditures, the estimated cost of construction, where required, the estimated cost of lands, properties, facilities, machinery, rights, easements and franchises to be acquired, if any, the estimated cost of engineering, architectural and legal expenses and all financing charges and interest, and such other estimated receipts and expenditures as may be necessary or incidental to such project, together with a projection of the gross and net revenues anticipated from the net operation of such project, and any proposed option, contracts or commitments involved in such project, and such other information as may be required by the district.

SOURCES: Codes, 1942, § 9054-63; Laws, 1971, ch. 517, § 13, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-29. Approval of projects.

On the receipt of an application from any public agency for the authorization of a regional project the district may cause an independent evaluation to be made of the plan submitted and if the district shall find and determine that the project is feasible and is in the public interest, then the district in its discretion may approve such plan as submitted or may approve such plan, subject to such changes and modifications as may be required by the district, or may disapprove such plan in its entirety, all in the discretion of the district. All costs of any consultants, technical or other personnel employed by the district in making an evaluation of such proposed project shall be borne by the public agency submitting the project, but the cost thereof shall be fixed by agreement between the district and such public agency prior to the district undertaking such evaluation. Any such project may, at the request of a public agency, be undertaken by the district for and on behalf of such public agency, subject to such terms, conditions and agreements as may be made by and between the district and such public agency, which agreements shall be binding on all parties thereto, and shall be enforceable in the chancery court as provided in Section 17-11-55. No such project shall be approved without the consent of the governing authorities of each city or county participating in such project and the consent of the governing authorities of each city or county within whose boundaries such project is to apply.

SOURCES: Codes, 1942, § 9054-64; Laws, 1971, ch. 517, § 14, eff from and after passage (approved April 14, 1971).

§ 17-11-31. Planning functions.

In its planning functions, the district may, in its discretion, use the gulf regional planning commission as the planning instrumentality of the district.

Each county and city within the district, including those counties or cities not associated as members of the district, shall make available to the district their current zoning ordinances, building codes, housing codes, subdivision regulations and all other codes which such cities or municipalities are authorized to adopt, and shall furnish the district from time to time with copies of all revisions, amendments or supplements to such ordinances, regulations or codes. The district is authorized to propose, but shall not have the power to compel, the adoption of uniform ordinances, regulations and codes pertaining to such matters, and may serve as a clearing house for the dissemination of information relating to planning matters between the counties, cities and other municipalities within the region.

SOURCES: Codes, 1942, § 9054-65; Laws, 1971, ch. 517, § 15, eff from and after passage (approved April 14, 1971).

Cross References — District's evaluation of any agency's plan, see § 17-11-29.

§ 17-11-33. Acquisition of property.

To carry out the powers and authority conferred by this chapter, the district is authorized either directly, or through the public agency involved in an approved project, to acquire land, and interests in land, property, and interest in property, including but not limited to rights, easements, licenses, franchises, and privileges therein necessary or required to carry out such approved project. The right to exercise the power of eminent domain shall be exercised only by the governing bodies of the political subdivisions within whose boundaries such approved project is to apply, as provided for by Chapter 27 of Title 11 of the Mississippi Code of 1972, and shall be subject to the same limitations as are now or may hereafter be imposed by law.

SOURCES: Codes, 1942, § 9054-66; Laws, 1971, ch. 517, § 16, eff from and after passage (approved April 14, 1971).

Cross References — Exercise of eminent domain by municipality, see § 21-37-47.

§ 17-11-35. Expenditure of public funds, issuance of bonds, and mortgaging of property authorized.

The district, and each county and city within the region associated as a member of the district, are hereby granted the power and authority to expend public funds of the district or such county or city for the purposes authorized by this chapter, and are authorized to issue revenue bonds, notes, or other revenue obligations to carry out the purposes of this chapter, and are authorized to mortgage or pledge property, real, personal or mixed, and to secure such obligations in a manner to be provided for by resolution of such district or such county or such city. The governing bodies of the district and each county or city within the region associated as a member of the district, acting separately or jointly, may, in its or their discretion, issue revenue bonds of the district, or of the county, or of the city, or jointly, to provide funds to finance any regional project approved by the district, in the manner provided in this chapter. Each county or city within the region, associated as a member of the district, may, in its discretion, issue general obligation bonds of such county or city, in an amount not to exceed its legal limit, to provide funds to finance any regional project approved by the district for any purpose which such county or city is now authorized, or hereafter may be authorized by law, to issue general obligation bonds of such county or such city. No authority, either direct or implied, is extended by this chapter to the district to issue general obligation bonds of the district as a whole, or of any participating agency or entity within the region, as described in this chapter.

In addition to the method of issuing bonds provided in this chapter, any county or city may, if authorized by law, issue bonds under any other general or special law to secure funds for the purposes of funding such project.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

Cross References — County's issuing bonds generally, see §§ 19-9-1 et seq.
Municipality's issuing bonds generally, see §§ 21-33-301 et seq.

§ 17-11-37. Resolution declaring intention to issue bonds; election.

The governing body of the district, county or city shall adopt a resolution declaring its intention to issue bonds for the purposes authorized by this chapter, stating the amount of the bonds proposed to be issued, whether such bonds are revenue bonds or general obligation bonds, and the date upon which further action will be taken by the governing body looking forward to the issuance of such bonds. Such resolution shall be published once a week for at least three successive weeks in a newspaper published and of general circulation within such county or city. The first of such publications shall be made at least twenty-one days prior to the date set forth in said resolution as the date upon which further action will be taken by the governing body, and the last publication shall be made not more than seven days prior to said date. If, prior to the date set forth as aforesaid, there shall be filed with the clerk of such governing body a petition in writing signed by ten percent (10%) of the qualified electors of such regional area, county or city thereof, or fifteen hundred (1,500) qualified electors, whichever shall be the lesser number, requesting an election on the question of the issuance of such bonds, then such bonds shall not be issued unless authorized by a majority of the qualified electors in such regional area, county or city voting thereon at an election to be ordered by the governing body for that purpose. Notice of such election shall be given and such election shall be held and conducted in like manner as provided by law with respect to elections held on the submission of county or city bond issues. If the proposition so submitted shall fail to receive approval at such election, then no further proceedings for the issuance of such bonds shall be taken for a period of six months from and after the date of such election. If, however, no such petition shall be filed, or if such election or subsequent election on such proposition shall be assented to by a majority of the qualified electors voting thereon, then such governing body shall be authorized to proceed with the issuance of such bonds without further election.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 17-11-39. Details of revenue bonds.

Revenue bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, mature at such time or times and upon such terms, with or without premium, bear such registration privileges and be substantially in such form, all as shall be determined by resolution of the governing body or bodies issuing such bonds. No bond shall bear more than one rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one year.

No interest payment shall be evidenced by more than one coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing body or bodies shall determine. Such bonds shall not bear a greater overall maximum interest rate to maturity than eight percent (8%) per annum, and the interest rate of any one maturity shall not exceed eight percent (8%) per annum. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%).

Such bonds shall mature in annual installments beginning not more than five years from the date thereof and extending not more than thirty-five years from the date thereof.

The revenue bonds issued under the provisions of this section shall be payable solely out of the revenues to accrue from the operation of the approved regional project, and the full faith and credit of the district, county or city shall not be pledged therefor, nor shall any ad valorem tax be levied therefor.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-41. Details of general obligation bonds.

General obligation bonds issued by any associated member county or city under this chapter shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, not exceeding the rate authorized to be paid on general obligation bonds of the state, be payable at such place or places within or without the State of Mississippi, mature at such time or times and upon such terms, with or without premium, bear such registration privileges and be substantially in such form, all as shall be determined by resolution of the governing body or bodies issuing such bonds.

The general obligation bonds authorized by this chapter shall not bear a greater overall maximum interest rate to maturity than the rate authorized to be paid on general obligation bonds of the county or city issuing same. No bond shall bear more than one rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one year.

No interest payment shall be evidenced by more than one coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing body or bodies shall determine. Such bonds shall not bear a greater overall maximum interest rate to maturity than eight percent (8%) per annum, and the interest rate of any one maturity shall not exceed eight percent (8%) per annum. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%), and a zero rate of interest cannot be named.

Such bonds shall mature in annual installments beginning not more than five years from the date thereof and extending not more than thirty-five years from the date thereof.

Such bonds shall mature in annual installments beginning not more than five years from the date thereof and extending not more than twenty-five years from the date thereof. Such bonds shall be general obligations of such county or such city and for the payment of such bonds and the interest thereon the full faith, credit and resources of such county or such city shall be irrevocably pledged. It shall be the mandatory duty of the governing body of such county or such city to annually levy on all taxable property within such county or such city an ad valorem tax sufficient to pay for such bonds as they mature, and the interest thereon as the same becomes due. The proceeds of such tax levy shall be used for no other purpose. In its discretion, the governing body of such county or city may also pledge for the payment of such bonds and the interest thereon the revenues from any approved regional project.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

Editor's Note — The provisions of the fourth and fifth paragraphs of this section with respect to the maturing of general obligation bonds appear to be in conflict.

§ 17-11-43. Execution of bonds.

All bonds issued under this chapter shall be signed by the presiding officer of the governing body or bodies issuing the same, and the official seal or seals of such governing body or bodies shall be affixed thereto, attested by the clerk or secretary of such governing body or bodies. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officers herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-45. Sale of bonds.

The governing body or bodies issuing bonds under this chapter shall sell such bonds in such manner and for such price as it or they may determine to be for the best interest of said governing body or bodies. No such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds of the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten days prior to the date of sale, and shall be published in a newspaper published in and having general circulation within such regional area, county or city.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 17-11-47. Disposition of proceeds; additional bonds.

The proceeds of bonds issued under this chapter shall be paid into a special fund or funds in banks qualified to act as depositories in such regional area, county or city, and may be deposited, invested, and disbursed as set out in the agreements relating to such approved project. The proceeds of such bonds shall be used solely for the purposes for which they were issued, interim investments, and the redeeming of any outstanding bonds, and shall be disbursed upon order of the governing body or bodies with such restriction, if any, as the resolution or resolutions authorizing the issuance of the bonds may provide.

If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the purpose for which they were issued, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution or resolutions authorizing the issuance of such bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution or resolutions authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same funds without preference or priority of the bonds first issued for the same purpose. However, such additional bonds issued shall not exceed ten percent (10%) of the amount of the original issue.

If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-49. Interim certificates authorized.

In anticipation of the issuance of the definitive bonds authorized by this chapter, any such county or city may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements, relating to their discharge by payment or by the delivery of the definitive bonds, as such county or city by resolution of its governing body may determine.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-51. Validation of bonds; hearing of objections to issuance and sale; negotiability.

All bonds issued under the authority of this chapter shall be validated in the chancery court of any county involved in an approved project, or in which a city involved in an approved project is located, and in the case of two or more cities located in different counties, then in either county, with all public agencies involved in such approved project being parties to the validation proceedings, with the full right to any party in interest to file objections thereto, in the manner and with the force and effect provided now by Chapter 13 of Title 31, Mississippi Code of 1972, for the validation of county, municipal school district and other bonds.

All objections to any matters relating to the issuance and sale of such bonds shall be adjudicated and determined by the chancery court in the validation proceedings and in no other manner, and all rights of the parties shall be preserved and not foreclosed, for the hearing before the chancery court or the chancellor in vacation.

All bonds and interest coupons issued under the provisions of this chapter and all notes or other obligations authorized herein, shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and income therefrom and all notes or other obligations authorized herein shall be exempt from all taxation within the State of Mississippi.

All such bonds, notes or other obligations authorized herein, may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified or required by this chapter.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

Cross References — Law of negotiable instruments under the Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 17-11-53. District is a state agency and instrumentality.

The district is an agency and instrumentality of the state and shall be and remain an agency of the state at all times while acting at the request of and for and on behalf of any public agency in the performance of a governmental function, and shall have the same immunity from all actions as does the public agency for which it is acting, except as hereinbefore and hereinafter provided.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-55. Suits involving district and associated members.

The district and all associated members thereof shall be vested with the power to enforce in chancery court by mandamus, in addition to the equitable remedies available in such courts, all legal rights or rights of action of the district or associated county or city with any public agency, corporation, or person, and for such purpose may sue, be sued, plead and be impleaded in the chancery court of any county in the district having jurisdiction of the subject matter of any such suit. In cases where the chancery court of more than one county may have jurisdiction of the subject matter of any action, the chancery court of either county may exercise exclusive jurisdiction and all parties having an interest therein shall be made parties to the proceedings.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17; Laws, 1991, ch. 573, § 105, eff from and after July 1, 1991.

Cross References — District's enforcement of terms, conditions and agreements in connection with approved projects, see § 17-11-29.

§ 17-11-57. Appeals.

Any person aggrieved by a judgment or decision of the governing body of the district or of an associated county or city involved in an approved project, may appeal therefrom within ten days from the date thereof to the chancery court of any county within the district having jurisdiction of the subject matter, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the persons acting as chairman or the presiding officer of the county or city or the governing body of the district. The executive director of the district or the clerk of such county or city shall transmit the bill of exceptions to the chancery court at once and the court shall either in term time or vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the chancery court shall render such judgment as should have been rendered, and certify the same to the district or county or city, and costs shall be awarded as in other cases. The district or any associated member thereof may employ counsel to defend such appeals or defend or prosecute any suit, to be paid out of the funds of the district or such county or city. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of any party and written notice for ten days to the other party or parties or the attorney of record, and the hearing of same shall be held in the county where the suit is pending, unless the judge in his order shall otherwise direct.

No appeals shall be taken from any order relating to or authorizing the issuance of bonds; these matters shall be heard in the manner provided by Section 17-11-51.

SOURCES: Codes, 1942, § 9054-67; Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

§ 17-11-59. Limitations.

Notwithstanding the powers and authority conferred on the district by this chapter, it is not the intent of this chapter to limit, abridge, restrict, or curtail any existing power granted to any municipality by law, but to provide a vehicle through which municipalities may more effectively perform their governmental and corporate functions, and the provisions of this chapter shall be cumulative, additional, and supplemental. Notwithstanding provisions of this chapter to the contrary, a municipality shall not be required to secure the approval by the district of any feasibility study, plans, or projects which the municipality may elect to undertake separately. Wherever any public agencies are now authorized to join with other municipalities, and undertake projects, then such municipalities may elect to proceed under such general laws, or may elect to come within the provisions of this chapter. Notwithstanding any regulation or requirement of any federal agency to the contrary, the governing body of the district shall not act for or on behalf of any public agency of the district in its dealings with such federal agency without the express consent of the public agency involved. It is the intent of this chapter that the governing body of the district shall not be vested with any governmental powers or functions other than those voluntarily conferred upon it by public agencies in the manner provided in this chapter.

SOURCES: Codes, 1942, § 9054-68; Laws, 1971, ch. 517, § 18, eff from and after passage (approved April 14, 1971).

§ 17-11-61. Amendments to chapter.

This chapter shall never be amended unless this chapter is brought forward in its entirety.

SOURCES: Codes, 1942, § 9054-70; Laws, 1971, ch. 517, § 20, eff from and after passage (approved April 14, 1971).

CHAPTER 13

Interlocal Cooperation of Governmental Units

Sec.
17-13-1. Short title.
17-13-3. Purpose.
17-13-5. Definitions.
17-13-7. Joint exercise of powers and responsibilities; agreements generally.
17-13-9. Specifications of agreements.
17-13-11. Approval and filing of agreements.
17-13-13. Funds, goods and services.
17-13-15. General limitation of authority.
17-13-17. Specific restriction of powers.

§ 17-13-1. Short title.

This chapter may be cited as the "Interlocal Cooperation Act of 1974."

SOURCES: Laws, 1974, ch. 498, § 1, eff from and after passage (approved April 2, 1974).

Cross References — Application of this chapter to the employment of a single county administrator to serve two to five counties, see § 19-4-1.

Authority for municipalities to enter into agreements to create consolidated fire districts, see § 21-25-5.

Interlocal Cooperative Agreement as source of funds for district attorney of any circuit court to employ additional legal assistants and/or criminal investigators, see § 25-31-5.

Interlocal agreement for collection by county of advalorem taxes due to municipality, see § 27-41-2.

Authority for counties to enter into agreements establishing regional medical examiner districts in accordance with this chapter, see § 41-61-77.

Power of regional or municipal airport authorities to enter into agreements with local governments pursuant to this chapter, see § 61-3-15.

ATTORNEY GENERAL OPINIONS

If advantageous, Rankin County and Department of Mental Health could enter into appropriate contract to share costs of water and sewer system, pursuant to Interlocal Cooperation Act. Younger, June 16, 1991, A.G. Op. #91-0399.

Interlocal Act, Miss. Code Sections 17-13-1 et seq., is proper means for creating multi-jurisdictional narcotics task force. Price, Feb. 18, 1993, A.G. Op. #92-0947.

Interlocal Cooperation Act, Miss. Code Sections 17-13-1 et seq., provides that any two or more local governmental units may enter into written contractual agreements with one another for joint or cooperative action to provide services and facilities: thus, one county can enter into such interlocal agreement with another county for housing of juveniles from one county in other county's detention center. Gowdy, Apr. 28, 1993, A.G. Op. #93-0256.

There is no authority for county to donate funds to municipal airport authority which county has not created pursuant to Section 61-3-5 but county could provide financial support to authority pursuant to proper interlocal agreement under Section 17-13-1 et. seq. Leggett, March 9, 1994, A.G. Op. #93-1022.

A county-owned utility or water district may, pursuant to Section 17-13-1, et seq., enter into an interlocal agreement with a municipality for the provision of water. Mullins, July 12, 1996, A.G. Op. #96-0371.

Sections 17-13-1, et seq. authorizes municipalities and counties to jointly create parks through interlocal agreements; therefore a city and a county may establish a joint park commission without special legislation authorizing them to do so. Hilliard, July 19, 1996, A.G. Op. #96-0441.

Municipalities may contract with each other pursuant to the Interlocal Cooperation Act of 1974 to provide for the joint operation, billing, maintenance, procurement of supplies, collection of fees, and termination of services for failure to pay fees for water. Thompson, June 5, 1998, A.G. Op. #98-0270.

There is no limit on the number of governmental units or the geographical area encompassed by a particular interlocal cooperation agreement. Thompson, June 5, 1998, A.G. Op. #98-0270.

An interlocal agreement was not necessary in connection with the extension of an agreement between a city and a county for the operation of a public airport as Section 61-5-35 contained specific authority to enter the agreement. Bowman, Mar. 9, 2001, A.G. Op. #01-0078.

There is no authority under §§ 17-13-1 et seq. for a municipal library, a county library, and a city-county library to enter into an interlocal agreement for a joint venture to share automated services, to automate other libraries, to jointly provide library cards, and to offer continuing education classes. Wegener, May 10, 2002, A.G. Op. #02-0244.

Under the Interlocal Cooperation Act governmental units may only exercise power, authority or responsibility for which they have independent statutory authority. The act does not enhance the power, authority and responsibility of political subdivisions. Holmes-Hines, Aug. 22, 2003, A.G. Op. 03-0422.

An interlocal agreement is the appropriate means of implementing a joint sidewalk program as part of an urban renewal project. Hollimon, June 4, 2004, A.G. Op. 03-0616.

The Interlocal Cooperation Act of 1974 could be used by a town and county to facilitate an agreement for the county, through the sheriff, to assist the town with law enforcement duties. Hight, July 23, 2004, A.G. Op. 04-0353.

§ 17-13-3. Purpose.

It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate and to contract with other local governmental units on a basis of mutual advantage and thereby provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

SOURCES: Laws, 1974, ch. 498, § 2, eff from and after passage (approved April 2, 1974).

Cross References — Authority for counties to enter into agreements establishing regional medical examiner districts in accordance with this chapter, see § 41-61-77.

§ 17-13-5. Definitions.

For the purpose of this chapter, the following words shall be defined as herein provided unless the context requires otherwise:

(a) "Local governmental unit" shall mean any county, any incorporated city, town or village, any school district, any utility district, any community college, any institution of higher learning, any municipal airport authority or regional airport authority in the state, any local tourism commission in the state or any public improvement district created under the Public Improvement District Act.

(b) "Governing authority" shall mean the board of supervisors of any county, board of trustees of any school district or community college whether elective or appointive, the governing board of any city, town or village, the board of commissioners of a utility district, the Board of Trustees of State Institutions of Higher Learning, the commissioners of a municipal airport authority or regional airport authority, the commission of a local tourism commission or the board of directors of any public improvement district created under the Public Improvement District Act.

SOURCES: Laws, 1974, ch. 498, § 3; Laws, 1989, ch. 354, § 1; Laws, 1992, ch. 379, § 1; Laws, 2002, ch. 499, § 28; Laws, 2009, ch. 401, § 1, eff from and after July 1, 2009.

Cross References — Application of definition of "local government" in this section to Airport Authorities Law, see § 61-3-3.

Public Improvement District Act, see §§ 19-31-1 et seq.

ATTORNEY GENERAL OPINIONS

An E-911 district is not a "local governmental unit" for the purposes of the Interlocal Cooperation Act of 1974. See Section 17-13-5. Henderson, August 23, 1995, A.G. Op. #95-0578.

§ 17-13-7. Joint exercise of powers and responsibilities; agreements generally.

(1) Any power, authority or responsibility exercised or capable of being exercised by a local governmental unit of this state may be exercised and carried out jointly with any other local governmental unit of this state, any state board, agency or commission and any public agency of the United States, to the extent that the laws of the United States permit such joint exercise or enjoyment.

(2) No such power, authority and responsibility may be exercised under the provisions of this chapter which will have the effect of abolishing any office which is held by a person elected by the citizenry, without first an election being called to decide the question of the abolition of any such elected office.

(3) No agreement made hereunder shall be entered into by any local governmental unit without the approval by resolution on the minutes of the governing authority of that local governmental unit.

(4) Any two (2) or more local governmental units may enter into written contractual agreements with one another for joint or cooperative action to provide services and facilities pursuant to the provisions of this chapter. Appropriate action by ordinance, resolution or otherwise pursuant to the law controlling the participating local governmental units or agencies shall be necessary before any such agreement shall be in force.

(5) No such power, authority and responsibility may be exercised under the provisions of this chapter by a local governmental unit which it would not have authority to exercise otherwise pursuant to the law controlling the local governmental unit.

SOURCES: Laws, 1974, ch. 498, § 4; Laws, 1976, ch. 421; Laws, 1979, ch. 494, § 2; Laws, 1981, ch. 505, § 1; Laws, 1985, ch. 514, § 1; Laws, 1986, ch. 333, eff from and after passage (approved March 19, 1986).

Cross References — Authority of local government unit to incur debt and appropriate funds for purposes set out in this section, whether or not the activities or improvements are within the boundaries of the local government unit, see § 17-13-13.

Interlocal agreement between governing authorities of municipality and county, pursuant to this section, for county to collect ad valorem taxes for municipality, see § 27-41-2.

Airport Authorities specifically authorized to enter into agreements with local governments under Interlocal Cooperation Act of 1974, see § 61-3-15.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 17-13-7, no power, authority or responsibility may be exercised under Interlocal Cooperation Act by local governmental unit which it did not have from independent source. Stone, Feb. 26, 1993, A.G. Op. #93-0123.

Miss. Code Section 17-13-7(5) does not empower county to pledge its full faith and credit as security for Planning and Development District (PDD) loan, and there is no grant of authority which would allow county to guarantee particular level of funding to PDD in such manner that purports to bind county beyond current governing board's term. McFatter, Apr. 28, 1993, A.G. Op. #93-0250.

Nothing prohibits municipal governing authorities from allowing municipal courtroom to be used by other local or state governmental entities when not in use by municipality and such cooperation between municipality and other governmental entities does not appear to be joint power, authority and responsibility that would require an interlocal agreement. Mills, March 2, 1994, A.G. Op. #94-0078.

Generally, board of supervisors is not authorized to expend money on behalf of human resource agencies for operating expenses; however, it was possible for agency and county to enter into interlocal agreement for county repair department to provide repair work and maintenance on county human resource agency's vehicles. DeBerry, March 9, 1994, A.G. Op. #93-1020.

Under Section 17-13-7 a district attorney's office is a state agency for the purposes of the Interlocal Cooperation Act, and therefore, the district attorney's office may enter into an interlocal agreement with a local governmental unit to create a Drug Task Force. Evans, May 10, 1996, A.G. Op. #96-0280.

There is no authority for a county to enter into an agreement to house prisoners from another state in the county jail. Walters, January 9, 1998, A.G. Op. #97-0832.

Other than specific situations specified by statute, there is no statutory authority which would permit a municipality to enter into an interlocal agreement with a county whereby the two entities could jointly carry out the flood control and drainage activities on the described property; the best course of action may be for the city and county to pursue local and private legislation approving the property in question as an industrial park and authorizing the work necessary to address the potential flooding issue. Prichard, January 15, 1998, A.G. Op. #97-0784.

A city, county, and community college district may, but are not required to, enter into an interlocal agreement to accomplish the construction of a regional vocational education center. Criss, August 7, 1998, A.G. Op. #98-0447.

The authority granted in the Interlocal Cooperation Act authorizes governmental entities to jointly exercise powers which each entity has independent statutory authority to exercise; but the act does not enhance the authority of governmental entities. Faneca, Sept. 7, 2001, A.G. Op. #01-0459.

There is no authority for a municipality to enter into an interlocal agreement to perform animal control services or to exercise law enforcement authority in the county for consideration. Mitchell, Mar. 15, 2002, A.G. Op. #02-0094.

A county may contract with a municipality to provide fire protection services to a business located within the corporate limits of the municipality. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

A county central vehicle repair department may provide repair and maintenance services to a regional mental health center pursuant to an interlocal agreement. Ross, Dec. 8, 2006, A.G. Op. 06-0594.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 17-13-9. Specifications of agreements.

(1) Any agreement made hereunder shall specify the following:

(a) Its duration.

(b) Its purpose or purposes.

(c) The precise organization, composition, nature and powers of any separate legal or administrative entity created thereby; the specific citation of statutory authority vested in each of the local governmental units which is to be a party to the agreement.

(d) The manner of financing, staffing and supplying the joint or cooperative undertaking and of establishing and maintaining a budget therefor; provided that the treasurer and/or disbursing officer of one (1) of the local governmental units shall be designated in the agreement to receive, disburse and account for all funds of the joint undertaking as a part of the duties of the officer or officers.

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination or amendment of the agreement and for disposing of property upon such partial or complete termination or amendment.

(f) The provision for administration, through a joint board or other appropriate means, of the joint or cooperative undertaking in the event that the agreement does not or may not establish a separate legal entity to conduct the joint or cooperative undertaking. In the case of a joint board, all local governmental units party to the agreement shall be represented.

(g) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking in the event that the agreement does not or may not establish a separate legal entity to conduct the joint or cooperative undertaking.

(h) Any other necessary and proper matters.

(2) Any municipality may enter into an agreement with a county under this chapter to provide that sales of property for the nonpayment of taxes levied or the nonpayment of special assessments as provided in Section 21-19-11 by such municipality shall be made by the county tax collector at the county courthouse in the same manner as provided by law for sales of like property for unpaid county taxes, and that redemptions of property sold for taxes or special assessments levied by such municipality shall be made through the chancery clerk of the county.

(3) Municipalities having as a common border a road or street may enter into an agreement pursuant to this chapter for the provision of police protection and law enforcement within the right-of-way of the street or roadway. An interlocal agreement undertaken pursuant to this subsection shall make the following provisions concerning violations occurring within the area subject to the agreement:

(a) Joint or several enforcement of all penal laws of the State of Mississippi which are misdemeanors made a violation of city ordinance by operation of the provisions of Section 21-13-19;

(b) Prosecution in the municipal court of the municipality employing the officer who made the arrest or issued the citation; jurisdiction shall lie in either municipality, and no charge filed in either municipal court shall be dismissed because of improper venue or lack of jurisdiction asserted solely on the grounds that the violation did not actually occur in the jurisdiction in which it is being prosecuted if the violation occurred in either jurisdiction; and

(c) Any actions reasonably necessary to provide police protection and law enforcement pursuant to the agreement.

SOURCES: Laws, 1974, ch. 498, § 5; Laws, 1989, ch. 389, § 1; Laws, 1995, ch. 406, § 1; Laws, 2008, ch. 405, § 2, eff from and after July 1, 2008.

Cross References — Authority for counties to enter into agreements establishing regional medical examiner districts in accordance with this chapter, see § 41-61-77.

ATTORNEY GENERAL OPINIONS

Counties and cities may enter into interlocal agreements to jointly construct and maintain roads and streets inside the municipality located in the county. However, because a municipality is without authority to construct and maintain roads outside the municipality it cannot enter into such an interlocal agreement. See Sections 65-7-79, 17-13-9(1)(c) and 17-13-11. Gardner, January 10, 1996, A.G. Op. #95-0827.

If a county appropriates money to initiate a preliminary engineering and environmental assessment phase of a thoroughfare project or if an Interlocal Agreement is approved allowing appropriation, the Chancery Clerk can perform all the duties assigned to him by the Executive Steering Committee. McAdams, April 17, 1998, A.G. Op. #98-0195.

§ 17-13-11. Approval and filing of agreements.

(1) Every agreement made by a local governmental unit hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General of this state who shall determine whether the agreement is in proper form and compatible with the laws of this state. No agreement may be considered that does not cite the specific authority under which each of the local governing units involved may exercise the powers necessary to fulfill the terms of the joint agreement. The Attorney General shall approve any such agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and elsewhere in the laws of this state and shall detail in writing addressed to the governing bodies of the units concerned the specific respects in which the proposed agreement fails to meet the requirements of law.

Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

(2) In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer, unit or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its being in force, be submitted to the state officer, unit or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing action of the attorney general pursuant to subsection (1) of this section.

(3) Prior to its being in force, an agreement made pursuant to this chapter shall be filed with the chancery clerk of each of the counties wherein a participating local governmental unit is located and with the Secretary of State. The chancery clerk and the Secretary of State shall preserve such agreements as public records and index and docket the same separate and apart from all other records in his office.

SOURCES: Laws, 1974, ch. 498, § 6; Laws, 2009, ch. 546, § 3, eff from and after passage (approved Apr. 15, 2009.)

Cross References — Authority for counties to enter into agreements establishing regional medical examiner districts in accordance with this chapter, see § 41-61-77.

ATTORNEY GENERAL OPINIONS

Counties and cities may enter into interlocal agreements to jointly construct and maintain roads and streets inside the municipality located in the county. However, because a municipality is without authority to construct and maintain roads outside the municipality it cannot enter into such an interlocal agreement. See Sections 65-7-79, 17-13-9(1)(c) and 17-13-11. Gardner, January 10, 1996, A.G. Op. #95-0827.

§ 17-13-13. Funds, goods and services.

The governing authority of any local governmental unit entering into an agreement pursuant to this chapter may incur bonded and floating indebtedness, including general obligation indebtedness as authorized by Sections 19-9-1 through 19-9-31 and Sections 21-33-301 through 21-33-329 and may appropriate funds for the purpose and in the manner prescribed by law without regard to whether the activities and improvements authorized by Section 17-13-7 to be financed by such debt or appropriation are within or without the boundaries of the local governmental unit. Said governing authority may sell, lease, grant or otherwise supply goods and services to any other local governmental unit which is a party to said agreement or the administrative body or legal entity created to operate the joint or cooperative undertaking.

SOURCES: Laws, 1974, ch. 498, § 7; Laws, 1981, ch. 505, § 2, eff from and after passage (approved April 18, 1981).

§ 17-13-15. General limitation of authority.

All laws in regard to purchases, auditing, depositories and expenditures in general which limit the authority of the agreeing local governing units shall also apply to any joint body created by the agreement pursuant to the provisions of this chapter.

SOURCES: Laws, 1974, ch. 498, § 8, eff from and after passage (approved April 2, 1974).

§ 17-13-17. Specific restriction of powers.

Any joint administrative body or legal entity created by agreement pursuant to the provisions of this chapter shall not have the power to levy taxes or incur debt. Such entity may not exercise any power, authority or responsibility except those powers, authorities and responsibilities specifically delegated to such joint administrative body or legal entity by the terms of the agreement made pursuant to the provisions of this chapter.

SOURCES: Laws, 1974, ch. 498, § 9, eff from and after passage (approved April 2, 1974).

CHAPTER 15

Human Resource Agencies

Sec.	
17-15-1.	Creation; declaration of intent.
17-15-3.	Governing boards.
17-15-5.	Powers of governing board in general; appointment of executive director; bond.
17-15-7.	General authority of human resource agency.
17-15-9.	Audits.
17-15-11.	Administrative expenses.

§ 17-15-1. Creation; declaration of intent.

The boards of supervisors and the municipal governing boards of the various counties and cities of the State of Mississippi are hereby empowered to create human resource agencies which may be comprised of one or more counties, cities, or any combination thereof. It is the express intention of this chapter that agencies created hereunder shall be operated under local governmental control and shall be responsible for administration of programs heretofore conducted by community action agencies, limited purpose agencies and related programs authorized by federal law.

SOURCES: Laws, 1974, ch. 506, § 1, eff from and after passage (approved April 3, 1974).

ATTORNEY GENERAL OPINIONS

County may set up human resource agency which may then use county funds to hire employees to continue "Homemaker's Program" previously administered by Department of Human Services; section is only statutory authority which allows county board of supervisors to use county funds to hire employees previously hired by Department of Human Services in "Homemaker's Program." Jones, April 12, 1990, A.G. Op. #90-0225.

Human Resource Agency may not incorporate itself as separate legal entity from county board of supervisors or municipal governing authority, and private, nonprofit community organization may not be human resource agency. Hathorn, Sept. 30, 1992, A.G. Op. #92-0780.

County board of supervisors which has participated in the creation of a human resource agency is not liable for deficit spending of such agency. Haque, Oct. 21, 1992, A.G. Op. #92-0764.

Human resource agency created under provisions of Section 17-15-1 et seq. may provide child care services under CCDBG, provided that such is authorized by applicable federal law and regulations. Mederos Sept. 7, 1993, A.G. Op. #93-0562.

It is not granted power of Human Resource Agency to hold raffle. Cockrell Nov. 3, 1993, A.G. Op. #93-0746.

There is no authority for City to donate funds to victims of land slides for relocation expenses. Granberry Nov. 19, 1993, A.G. Op. #93-0772.

Based on Sections 17-15-1, 17-15-3 and 17-15-7, a human resource agency is authorized to provide services only within the counties and municipalities of which the agency is composed. Cockrell, May 3, 1996, A.G. Op. #96-0249.

There is no statutory authority for the payment of per diem to members of a governing board of a human resource agency created pursuant to §§ 17-15-1 et seq. Toney, March 29, 1999, A.G. Op. #99-0130.

A "spin-off" board created by the human resource agency board to perform certain duties of the human resource agency board may not receive salary or per diem compensation. Burrell, Oct. 5, 2001, A.G. Op. #01-0632.

A human resource agency is authorized to provide services only within the counties and municipalities of which the agency is composed. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

Each representative appointed by the county board of supervisors or the municipal governing authority falls within the definition of "employee" in § 1-46-1(f) and, consequently, sovereign immunity pursuant to the Tort Claims Act applies. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

A human resource agency may apply for and utilize CDBG funds to purchase land and build a facility, provided that such is authorized by applicable federal law and regulations. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

A county that established a human resource agency may unilaterally dissolve the agency by appropriate action in its minutes. Cockrell, Dec. 27, 2005, A.G. Op. 05-0548.

§ 17-15-3. Governing boards.

There shall be a governing board for each human resource agency so created, which shall be appointed by the board of supervisors or municipal governing authority of the county or city of which the human resource agency is comprised, which shall be comprised of not less than five (5) persons, a majority of whom shall constitute a quorum and the membership of which shall be broadly based and equitably distributed between providers and consumers of human resource services, and where more than one (1) county or city or combination thereof comprises such agency, there shall be representation from each of the counties or cities comprising the agency, to be appointed according to a plan to be adopted by the governing authorities thereof at the time of the creation of such agency. The term of the members of the governing board for each agency shall not exceed five (5) years, and the members shall be appointed on a staggered basis in a manner to be determined by the governing authority making the appointments.

SOURCES: Laws, 1974, ch. 506, § 2; Laws, 1976, ch. 332, eff from and after July 1, 1976.

ATTORNEY GENERAL OPINIONS

A board member of a human resource agency is not limited to a single five-year term and may be reappointed to serve a second consecutive term under Section 17-15-3. Cockrell, July 20, 1995, A.G. Op. #95-0436.

Based on Sections 17-15-1, 17-15-3 and 17-15-7, a human resource agency is authorized to provide services only within the counties and municipalities of which the agency is composed. Cockrell, May 3, 1996, A.G. Op. #96-0249.

While each supervisor may recommend a qualified individual, the official appointment must be made by the board of supervisors. An individual supervisor may recommend an individual of a district other than the district represented by the recommending supervisor. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

§ 17-15-5. Powers of governing board in general; appointment of executive director; bond.

The powers of the governing board of every human resource agency shall include the power to adopt bylaws, to appoint persons to senior staff positions including the appointment of an executive director, to determine major personnel, physical and program policy and approve overall program plans and priorities and to assure compliance with conditions of and approve proposals for financial assistance over this chapter. The executive director shall hold office at the will and pleasure of the governing board and his employment may be terminated at any time by a majority vote thereof and his salary shall be fixed by the board. The executive director shall give bond with sufficient surety, to be payable, conditioned and approved as provided by law and by the governing board, in a penalty equal to Fifty Thousand Dollars ($50,000.00), with the premiums thereon to be paid by the governing board from funds provided herein for administrative expenses.

SOURCES: Laws, 1974, ch. 506, § 3; Laws, 1986, ch. 458, § 14, eff from and after October 1, 1986.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 17-15-5 would stand repealed from and after October 1, 1989. Subsequently, Laws, 1986, Chapter 458, § 48, was amended by Laws, 1986, Chapters 341, 342, and 343, which deleted the date for repeal.

ATTORNEY GENERAL OPINIONS

It is not granted power of Human Resource Agency to hold raffle. Cockrell Nov. 3, 1993, A.G. Op. #93-0746.

§ 17-15-7. General authority of human resource agency.

In order to carry out its overall responsibility for administering a human resource program, a human resource agency is hereby given the authority to own and dispose of property, both real and personal, and to receive and administer funds under this chapter, funds and contributions from private or local public sources which may be used in support of a human resource program, and funds under any federal or state assistance program pursuant to which such an agency organized in accordance with the provisions of this chapter could serve as grantee, contractor, or sponsor of projects appropriate for inclusion in a human resource program.

SOURCES: Laws, 1974, ch. 506, § 4, eff from and after passage (approved April 3, 1974).

ATTORNEY GENERAL OPINIONS

Human resource agency created under provisions of Section 17-15-1 et seq. may provide child care services under CCDBG, provided that such is authorized by applicable federal law and regulations. Mederos Sept. 7, 1993, A.G. Op. #93-0562.

It is not granted power of Human Resource Agency to hold raffle. Cockrell Nov. 3, 1993, A.G. Op. #93-0746.

There is no authority for City to donate funds to victims of land slides for relocation expenses. Granberry Nov. 19, 1993, A.G. Op. #93-0772.

Based on Sections 17-15-1, 17-15-3 and 17-15-7, a human resource agency is authorized to provide services only within the counties and municipalities of which the agency is composed. Cockrell, May 3, 1996, A.G. Op. #96-0249.

A human resource agency is authorized to provide services only within the counties and municipalities of which the agency is composed. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

§ 17-15-9. Audits.

Each governing board shall prepare an annual audit report of its activities through September 30 of each year and shall submit a copy thereof to each board of supervisors and municipal governing authority comprising the human resource agency. In addition, the financial records of each board shall be subject to audit by said boards of supervisors or municipal governing authorities and by the state auditor of public accounts.

SOURCES: Laws, 1974, ch. 506, § 5, eff from and after passage (approved April 3, 1974).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

ATTORNEY GENERAL OPINIONS

Considering the legislative intent regarding accountability for public funds in human resource agencies which have taken the place of community action agencies, and considering the practical fact that without regular audits, Coahoma County, as donor, would not know whether the donated funds were properly used, funds donated to Coahoma Opportunities, Inc., pursuant to Chapter 840, Section 1, Local and Private Laws of Mississippi, 1983, are subject to audit by the Board of Supervisors of Coahoma County and by the state auditor of public accounts; further, the Board of Supervisors may specify the purpose. Ross, August 13, 1999, A.G. Op. #99-0396.

Although the board of supervisors has the authority to audit the financial records of each governing board of the human resource agency and may include it within the county audit, it is not required to do so. Inclusion within the county audit does not relieve the governing board of the human resource agency from preparing its own annual audit report. Mederos, Jan. 16, 2004, A.G. Op. 03-0642.

§ 17-15-11. Administrative expenses.

The board of supervisors of each county and the municipal governing authority of each municipality comprising a human resource agency may, in their discretion, set aside, appropriate and expend funds from the general fund or federal revenue sharing funds to defray the administrative expenses incurred in the operation of such human resource agency.

SOURCES: Laws, 1974, ch. 506, § 6; Laws, 1986, ch. 400, § 4, eff from and after October 1, 1986.

ATTORNEY GENERAL OPINIONS

Human resource agency created under provisions of Section 17-15-1 et seq. may provide child care services under CCDBG, provided that such is authorized by applicable federal law and regulations. Mederos Sept. 7, 1993, A.G. Op. #93-0562.

Generally, board of supervisors is not authorized to expend money on behalf of human resource agencies for operating expenses; however, it was possible for agency and county to enter into interlocal agreement for county repair department to provide repair work and maintenance on county human resource agency's vehicles. DeBerry, March 9, 1994, A.G. Op. #93-1020.

CHAPTER 17

Solid Wastes Disposal

Solid Wastes Disposal 17-17-1
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Disclosure Requirements of Applicants for Commercial Hazardous or Nonhazardous Solid Waste Facility Permits 17-17-501

SOLID WASTES DISPOSAL

Sec.
17-17-1. Short title.
17-17-2. Administration and enforcement transferred to Commission on Environmental Quality and Department of Environmental Quality.
17-17-3. Definitions.
17-17-5. Local governing bodies to provide for collection and disposal of garbage and rubbish; contracts; regulation of sanitary landfills; annexation.
17-17-7. Garbage disposal.
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17-17-29. Penalties; injunction; recovery of cost of remedial action; disposition of fines.
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17-17-51. Facilities licensed by the Nuclear Regulatory Commission.
17-17-53. Commercial hazardous and nonhazardous waste facilities to file annual reports and pay disposal fees; fee calculation; disposition of proceeds.
17-17-54. Uncontrolled Site Evaluation Trust Fund.
17-17-55. Hazardous Waste Facility Site Revolving Fund; purpose of fund; rules and regulations.
17-17-57. Immunity of persons rendering aid in accidents involving discharge of hazardous materials.
17-17-59. Moratorium on new or expanded nonhazardous solid waste facilities.
17-17-61. Repealed.
17-17-63. Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund [Paragraph (3)(d) repealed effective June 30, 2014].
17-17-65. Local Governments Solid Waste Assistance Fund.
17-17-67. Environmental felony for purposeful or reckless disposition of hazardous waste; penalties.

§ 17-17-1. Short title.

This chapter shall be known as the "Solid Wastes Disposal Law of 1974."

SOURCES: Laws, 1974, ch. 573, § 1, eff from and after passage (approved April 24, 1974).

Cross References — Penalties for violation of §§ 17-17-1 through 17-17-47 or rules or regulations thereunder, or any order issued by commission subject to § 17-17-29, see § 49-17-43.

Chapter as supplemental to §§ 19-5-17 and 19-5-19, see § 17-17-31.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Nonhazardous solid waste planning, see §§ 17-17-201 et seq.

Disposal of waste tires, see §§ 17-17-401 et seq.

Use of excess fees generated by commercial hazardous waste management facility to fund programs which foster multimedia waste prevention, reduction, etc., see § 17-18-33.

Powers of boards of supervisors to provide for disposal of garbage and rubbish, see §§ 19-5-17 and 19-5-19.

Provision for income tax deduction with respect to the amortization of any certified pollution or environmental control facility, see § 27-7-17.

General supervision of the Commission on Natural Resources acting through the bureau of pollution control of the Department of Natural Resources over administration and enforcement of the Solid Wastes Disposal Law of 1974, see § 49-17-17.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Application for air or water permit to state permit board, see § 49-17-29.

Submission of plans, specifications and other information to permit board to carry out provisions of §§ 17-17-1 through 17-17-47 or to carry out rules and regulations adopted pursuant to such sections, see § 49-17-29.

Proceedings before Mississippi Commission on Environmental Quality for violation of any provisions of §§ 17-17-1 through 17-17-47, see § 49-17-31.

Assessment of a penalty which will further the purposes of §§ 17-17-1 et seq. upon the failure of a person to appear at a hearing before the Mississippi Commission on Environmental Quality, see § 49-17-33.

Construction grants for waste disposal plants and approval thereof by Air and Water Pollution Control commission, see §§ 49-17-65 and 49-17-67.

Waveland Regional Wastewater Management Act, see §§ 49-17-161 et seq.

Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, see § 49-35-1 et seq.

Federal Aspects — Hazardous Materials Transportation Uniform Safety Act of 1990, see 49 USCS §§ 5101 et seq.

JUDICIAL DECISIONS

1. In general.

Sections 17-17-1 et seq. clearly delegated authority to the Mississippi Commission on Environmental Quality to enact sufficient rules and regulations to both define "transfer" of a non-hazardous solid waste disposal permit and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

Insecticide: tort liability for injury or damage resulting from insecticide and vermin eradication operations. 25 A.L.R.2d 1057.

License, permit, or franchise, liability of municipality in damages for its refusal to grant. 37 A.L.R.2d 694.

Pollution: liability of municipalities for pollution of subterranean waters. 38 A.L.R.2d 1305.

Dump: municipal liability for maintenance of public dump as nuisance. 52 A.L.R.2d 1134.

Regulation and licensing of private garbage or rubbish removal services. 83 A.L.R.2d 799.

Premises liability: liability of owner or occupant to garbage or trash man coming on premises in course of duty. 36 A.L.R.3d 610.

Discrimination in provision of municipal services or facilities as civil rights violation. 51 A.L.R.3d 950.

Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 398-405.

57 Am. Jur. 2d, Municipal, etc., Tort Liability §§ 83-106.

58 Am. Jur. 2d, Nuisance §§ 76, 77.

61B Am. Jur. 2d, Pollution Control §§ 85-89.

CJS. 39A C.J.S., Health and Environment § 77.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

§ 17-17-2. Administration and enforcement transferred to Commission on Environmental Quality and Department of Environmental Quality.

The administration and enforcement of the Solid Wastes Disposal Law of 1974 are hereby transferred from the State Board of Health to the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality. All personnel, records, property, equipment and funds allocated to the State Board of Health exclusively for the administration and enforcement of the Solid Wastes Disposal Law of 1974, as amended, are hereby transferred to and placed under the supervision and control of the Mississippi Department of Environmental Quality.

SOURCES: Laws, 1981, ch. 528, § 1; Laws, 1991, ch. 494 § 22, eff from and after passage (approved April 1, 1991).

Cross References — Department of Environmental Quality, see §§ 49-2-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-17-3. Definitions.

For purposes of this chapter, the following words shall have the definitions ascribed herein unless the context requires otherwise:

(a) “Agency” means any controlling agency, public or private, elected, appointed or volunteer, controlling and supervising the collection and/or disposal of solid wastes.

(b) “Ashes” means the solid residue from burning of wood, coal, coke or other combustible materials used for heating, or from incineration of solid wastes, but excepting solid residue the storage or disposition of which is controlled by other agencies.

(c) “Commercial hazardous waste management facility” means any facility engaged in the storage, treatment, recovery or disposal of hazardous waste for a fee and which accepts hazardous waste from more than one (1) generator. A facility (i) which is designed principally for treatment of aqueous hazardous wastes and residue; and (ii) which is situated within an industrial park or area; and (iii) which disposes of no hazardous waste within the State of Mississippi shall not constitute a commercial hazardous waste management facility for purposes of Section 17-17-151(3)(a) only.

(d) “Commercial nonhazardous solid waste management facility” means any facility engaged in the storage, treatment, processing or disposal of nonhazardous solid waste for compensation or which accepts nonhazardous solid waste from more than one (1) generator not owned by the facility owner.

(e) "Commercial oil field exploration and production waste disposal" means storage, treatment, recovery, processing, disposal or acceptance of oil field exploration and production waste from more than one (1) generator or for a fee.

(f) "Commercial purpose" means for the purpose of economic gain.

(g) "Commission" means the Mississippi Commission on Environmental Quality.

(h) "Composting or compost plant" means an officially controlled method or operation whereby putrescible solid wastes are broken down through microbic action to a material offering no hazard or nuisance factors to public health or well-being.

(i) "Department" means the Mississippi Department of Environmental Quality.

(j) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(k) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(*l*) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

(m) "Hazardous wastes" means any waste or combination of waste of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed which are listed by the Environmental Protection Agency as hazardous wastes which exceed the threshold limits set forth in the Environmental Protection Agency regulations for classifying hazardous waste. Such wastes include, but are not limited to, those wastes which are toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means. Such wastes do not include those radioactive materials regulated pursuant to the Mississippi Radiation Protection Law of 1976, appearing in Section 45-14-1 et seq.

(n) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

(o) "Head" means the head of the Office of Pollution Control of the Mississippi Department of Environmental Quality or his designee.

(p) “Health department” means the Mississippi State Health Department and every county or district health department. “Health officer” means the state or affected county health officer or his designee.

(q) “Manifest” means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transport.

(r) “Office” means the Office of Pollution Control of the Mississippi Department of Environmental Quality.

(s) “Open dump” means any officially recognized place, land or building which serves as a final depository for solid wastes, whether or not burned or buried, which does not meet the minimum requirements for a sanitary landfill, except approved incinerators, compost plants and salvage yards.

(t) “Permit board” means the permit board created by Section 49-17-28.

(u) “Person” means any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

(v) “Pollution Emergency Fund” means the fund created under Section 49-17-68.

(w) “Rubbish” means nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (not less than 1600 degrees F).

(x) “Sanitary landfill” means a controlled area of land upon which solid waste is deposited, and is compacted and covered with no on-site burning of wastes, and so located, contoured, drained and operated so that it will not cause an adverse effect on public health or the environment.

(y) “Solid wastes” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(z) “Storage” means the containment of wastes, either on a temporary basis or for a period of years, except as provided in 40 C.F.R. 263.12, in such a manner as not to constitute disposal of such wastes.

(aa) “Transport” means the movement of wastes from the point of generation to any intermediate points, and finally to the point of ultimate storage or disposal.

(bb) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste in order to neutralize such character or composition of any solid waste, neutralize such waste or render such waste, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

(cc) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

(dd) "Unauthorized dump" means any collection of solid wastes either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used. An abandoned automobile, large appliance, or similar large item of solid waste shall be considered as forming an unauthorized dump within the meaning of this chapter, but not the careless, scattered littering of smaller individual items as tires, bottles, cans and the like. An unauthorized dump shall also mean any solid waste disposal site which does not meet the regulatory provisions of this chapter.

SOURCES: Laws, 1974, ch. 573, § 2; Laws, 1979, ch. 491, § 1; Laws, 1981, ch. 528, § 2; Laws, 1982, ch. 411, § 1; Laws, 1988, ch. 311, § 1; Laws, 1990, ch. 536, § 1; Laws, 1991, ch. 494 § 21; Laws, 1991, ch. 605 § 3; Laws, 1994, ch. 543, § 2, eff from and after July 1, 1994.

Cross References — Disposal of hazardous wastes, see § 17-17-5.

Exclusion of hazardous wastes from exemption granted to individuals disposing of solid wastes on their own lands, see § 17-17-13.

Mississippi Regional Solid Waste Management Authority Act, see §§ 17-17-301 et seq.

Application of definition of hazardous waste in this section to Hazardous Waste Facility Siting Act, see § 17-18-5.

Department of Environmental Quality, §§ 49-2-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

Federal Aspects — Federal Water Pollution Control Act (also known as the Federal Clean Water Act), see 33 USCS §§ 1251 et seq.

Atomic Energy Act of 1954, see 42 USCS §§ 2011 et seq.

JUDICIAL DECISIONS

1. In general.
2. Commercial waste.

1. In general.

Sections 17-17-1 et seq. clearly delegated authority to the Mississippi Commission on Environmental Quality to enact sufficient rules and regulations to both define "transfer" of a non-hazardous solid waste disposal permit and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

2. Commercial waste.

Mississippi Oil and Gas Board's jurisdiction did not extend to the regulation of commercial disposal of waste products or over claims based on common law. Howard v. Totalfina E&P USA, Inc., 899 So. 2d 882 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

Proposed storage at facility for a fee and acceptance of hazardous waste from more than one generator brings proposed facility under definition of "commercial hazardous waste management facility". Palmer, March 15, 1994, A.G. Op. #93-0941.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-5. Local governing bodies to provide for collection and disposal of garbage and rubbish; contracts; regulation of sanitary landfills; annexation.

(1) After December 31, 1992, the board of supervisors and/or municipal governing body shall provide for the collection and disposal of garbage and the disposal of rubbish. The board of supervisors and/or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies, and the service may include house-to-house service or the placement of regularly serviced and controlled bulk refuse receptacles within reasonable distance from the farthest affected household, and the wastes disposed of in a manner acceptable to the department and within the meaning of this chapter. The board of supervisors and/or municipal governing body shall have the power to and are hereby authorized to enter into contracts related in any manner to the collection and transportation of solid wastes for a term of up to six (6) years and to enter into contracts related in any manner to the generation and sale of energy generated from solid waste, and contracts for treatment, processing, distribution, recycling, elimination or disposal of solid wastes for a term of up to thirty (30) years. The municipal governing body of any municipality is authorized to regulate the disposal of garbage and rubbish in sanitary landfills, as provided in Section 21-19-1, Mississippi Code of 1972.

(2) In the event an unincorporated area which is annexed by a municipality is being provided collection and disposal of garbage and rubbish under contract with private or other controlling agencies, the municipality shall annex the area subject to the contract for the remainder of the term of the contract, but not to exceed five (5) years.

SOURCES: Laws, 1974, ch. 573, § 3(1); Laws, 1981, ch. 528, § 3; Laws, 1982, ch. 405, § 2; Laws, 1984, ch. 523; Laws, 1991, ch. 581, § 25; Laws, 1992, ch. 583 § 1; Laws, 2000, ch. 392, § 1, eff from and after July 1, 2000.

Cross References — Supervision by Department of Environmental Quality over solid wastes disposal, see § 17-17-27.

Participation in regional solid waste disposal and recovery systems, see § 17-17-33.

Establishment and maintenance by county of rubbish and garbage disposal systems, see §§ 19-5-17 et seq.

Requirements of and limitations on contracts with counties and municipalities, see §§ 19-13-15 and 31-7-49.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

ATTORNEY GENERAL OPINIONS

City of Magee may use city equipment to cover limbs and other debris which city dumps on private property where property owner receives only incidental benefit in having landfill located on his property, provided, however, such action must in fact be for sole benefit of city and any benefit accruing to landowner is merely incidental. Runnels, Oct. 24, 1990, A.G. Op. #90-0811.

Although county may not lease county-owned equipment to private firm, county may contract for services of private entity to collect garbage using county-owned garbage trucks, with appropriate provisions regarding liability, case, and use of trucks. Jones, Dec. 3, 1992, A.G. Op. #92-0903.

County may contract with private contractors to transfer waste directly from one county to disposal site in second county without having second contractor take waste from second county's convenience center to disposal site. Gex, July 2, 1992, A.G. Op. #92-0495.

Section 17-17-5 authorizes a municipal governing body to contract with private entities, not to exceed six years, to provide solid waste collection and disposal services to the public. There is no statutory requirement that a municipal governing body should advertise for bids for such a service contract. Mills, March 22, 1995, A.G. Op. #95-0135.

Reading Section 17-17-5 and Section 31-17-13 in pari materia, the governing authority of a municipality may not exercise an option to extend a garbage collection or transportation contract beyond a six year term without advertising for proposals as set out in the latter statute. Pope, December 23, 1998, A.G. Op. #98-0755.

A county board of supervisors may not pick up and dispose of household rubbish within the municipal boundaries of a city without the consent of the municipality. Entrekin, Feb. 18, 2000, A.G. Op. #2000-0059.

A county was required to readvertise for proposals in order to amend a solid waste collection and disposal contract to allow the county to utilize the county's credit in order to obtain a more favorable lease-purchase price for garbage carts that would be used by customers. Griffith, Mar. 9, 2001, A.G. Op. #01-0072.

If the annexation of territory in a county by a city is final and precleared by the U.S. Justice Department prior to the beginning date of a new garbage collection and disposal services contract, § 17-17-5(2) does not require the city to honor the contract between the county and the contractor. Hollimon, Sept. 16, 2002, A.G. Op. #02-0500.

A board of supervisors may sign a five-year contract concerning waste pickup. Jeanes, Sept. 24, 2004, A.G. Op. 04-0463.

A county may contract with a county cooperative service district to provide garbage disposal and to bill and collect the fees for the garbage service. The services may be performed for either an annual or monthly fee. Hudson, Oct. 8, 2004, A.G. Op. 04-0480.

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 7.1 (complaint to compel municipality to apply to state department of environmental protection for approval of plans to close sanitary landfill).

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in

Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-7. Garbage disposal.

Garbage and rubbish containing garbage shall be disposed of by sanitary landfill, approved incineration, composting, or by other means now available or which may later become available as approved by the department and under the supervision and control of a governmental, private or other agency acting within the provisions of this chapter.

SOURCES: Laws, 1974, ch. 573, § 3(2); Laws, 1981, ch. 528, § 4, eff from and after July 1, 1981.

Cross References — Supervision by Department of Environmental Quality over solid wastes disposal, see § 17-17-27.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

§ 17-17-9. Burning of garbage, etc.

No garbage, or rubbish containing garbage or other putrescible materials, or hazardous wastes shall be burned except in approved incinerators meeting the necessary temperature requirements and air pollution controls as now established or may later be established. The open burning of rubbish shall be permitted only under controlled circumstances where sanitary landfill and landfill is not feasible, and not in proximity to sanitary landfill or landfill operations where spread of fire to these operations may be a hazard in the opinion of the controlling agency.

SOURCES: Laws, 1974, ch. 573, § 3, eff from and after passage (approved April 24, 1974).

Cross References — Hazardous Waste Technical Siting Committee, see § 17-18-11.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

§ 17-17-11. Hauling of solid waste.

Trucks or other vehicles engaged in the business of hauling solid waste shall be so covered, secured or sealed that there will be no loss during haulage to cause littering of streets and highways or cause a nuisance or hazard to the public health.

SOURCES: Laws, 1974, ch. 473, § 3; Laws, 1979, ch. 491, § 2, eff from and after July 1, 1979.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Requirement that open top vehicles carrying sand, dirt, gravel or rock be covered, see §§ 63-7-83 and 63-7-85.

Penalty for littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

ATTORNEY GENERAL OPINIONS

The owner/driver of a private garbage truck is required to cover his load with a tarp. Miller, Feb. 20, 2004, A.G. Op. 04-0055.

§ 17-17-13. Exemption.

Nothing in this chapter shall prevent an individual or firm from disposing of solid waste from his own household or business upon his own land, provided such wastes are not hazardous as defined in Section 17-17-3(i) and provided such household or business is located and situated in the State of Mississippi

Provided, however, this exemption shall not operate to prevent the conduct of any waste disposal site investigation or inventory required by applicable state or federal law, rule or regulation, and further shall not operate to exclude from the regulatory provisions of this chapter any solid waste determined by the department to have characteristics that constitute an endangerment to the environment or the public health, safety or welfare, or any site used for the disposal of such solid waste.

SOURCES: Laws, 1974, ch. 573, § 3; Laws, 1976, ch. 341, § 6; Laws, 1981, ch. 528, § 5, eff from and after July 1, 1981.

Cross References — Exemption of persons disposing of solid waste upon own property from provisions of Nonhazardous Solid Waste Planning Act, see § 17-17-233.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Acts authorized by this section not prohibited by provisions prohibiting the unauthorized dumping of solid wastes, see § 97-15-30.

ATTORNEY GENERAL OPINIONS

Pursuant to Miss. Code Section 17-17-13, it is clear that municipalities may not compel collection of fees and charges for garbage collection services except from users of service. Shivel, Jan. 27, 1993, A.G. Op. #92-1003.

1993 amendment to Section 17-17-227 authorizes governing bodies to assess and collect fees from each single family residential generator of nonhazardous solid waste and each industrial, commercial and multi-family residential generator of nonhazardous solid waste for all periods of time such generator has not otherwise contracted for collection and disposal at permitted or authorized facility, but these amendments do not alter Section 17-17-13 exemption. Harris, July 6, 1993, A.G. Op. #93-0128.

A person may dispose of solid waste from his own household upon his own land only if he is a single-family generator and the county board of supervisors has so authorized; any person disposing of solid waste on his own land must nevertheless comply with all state and federal laws, rules and regulations governing such disposal. Caughman, March 10, 2000, A.G. Op. #99-0194.

RESEARCH REFERENCES

ALR. State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-17-15. Disposal of hazardous wastes.

(1) Hazardous wastes shall not be handled or disposed of along with or in the same site or adjoining site as ordinary wastes unless specifically approved as exempted waste by the department. These shall be disposed of by special incinerators, separate landfills, or other means dictated by the particularities of the hazardous waste involved, as determined by the department or other responsible agency. The department may, in its discretion, maintain a field office at any treatment or disposal facility that receives hazardous wastes directly or indirectly from more than one (1) generator. However, the department shall maintain a field office at any commercial off-site multiuser hazardous waste incinerator designed to incinerate multiple nonhomogeneous types of wastes, and the cost of operating such field office shall be borne by the owner of such commercial hazardous waste incinerator. The field office, when required, shall be located in adequate accommodations provided by the facility owner and shall be staffed with department regulatory personnel as deemed necessary by the department. In exercising its discretion to determine the need for a field office, regulatory staff and support equipment, the department shall consider, at a minimum, the type and amount of hazardous waste received and also the type of facility. All fees shall be established by the department and shall be in addition to any other fees provided by law. The fee prescribed by the department shall be in an amount not less than the actual operating expenses of the permanent field office and shall be in addition to any other fees required by law.

(2) In addition to considering all applicable state and federal laws and regulations, the Mississippi Pollution Control Permit Board shall not issue a permit for the establishment or operation of a commercial hazardous waste landfill for the disposal of hazardous waste (as defined by Section 17-17-3, Mississippi Code of 1972), in the State of Mississippi until the Environmental Protection Agency makes a final determination, pursuant to the Federal Hazardous and Solid Waste Amendments of 1984, P.L. No. 98-616, that each waste to be placed in such landfill is suitable for land disposal.

SOURCES: Laws, 1974, ch. 573, § 4; Laws, 1981, ch. 528, § 6; Laws, 1984, ch. 399; Laws, 1985, ch. 436; Laws, 1989, ch. 496, § 1, eff from and after July 1, 1989.

Cross References — Supervision by Department of Environmental Quality over solid wastes disposal, see § 17-17-27.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

Federal Aspects — Toxic Substances Control Act, see 15 USCS §§ 2601 et seq.

Solid Waste Disposal Act, see 42 USCS §§ 6901 et seq.

Hazardous Materials Transportation Uniform Safety Act of 1990, see 49 USCS §§ 5101 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Right to intervene in federal hazardous waste enforcement action. 100 A.L.R. Fed. 35.

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-17. Unauthorized dumps as public nuisance per se.

The formation of unauthorized dumps is hereby declared to be a public nuisance per se, menacing public health and unlawful, and any person who forms an unauthorized dump shall be punished as provided in Section 17-17-29. Existing dumps shall be eliminated by removal or on-site burial.

SOURCES: Laws, 1974, ch. 573, § 4, eff from and after passage (approved April 24, 1974).

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-17-19. Vermin control.

Rodents and insects of public health importance, as rats, flies, mosquitoes and the like shall be controlled in a manner satisfactory to the health department; and the closing out or conversion to sanitary landfill operations of existing open dumps shall, where deemed necessary by the health officer, be accompanied by an adequate rat eradication program to prevent the spread of rodents to nearby properties.

SOURCES: Laws, 1974, ch. 573, § 4, eff from and after passage (approved April 24, 1974).

Cross References — Supervision by Department of Environmental Quality over solid wastes disposal, see § 17-17-27.

Mosquito control, see §§ 41-27-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§§ 17-17-21 through 17-17-25. Repealed.

Repealed by Laws of 1991, ch. 581, § 32, eff from and after passage (approved April 12, 1991).

§ 17-17-21. [En Laws, 1974, ch. 573, § 5]

§ 17-17-23. [En Laws, 1974, ch. 573, § 5; Laws, 1981, ch. 528, § 7; Laws, 1982, ch. 411, § 2]

§ 17-17-25. [En Laws, 1974, ch. 573, § 5]

Editor's Note — Former § 17-17-21 provided for fees, rates, and charges. For the Mississippi Regional Solid Waste Management Authority Act, see §§ 17-17-301 et seq.

Former § 17-17-23 provided for assignation of solid waste territories, approval of sites and license fees set by local government.

Former § 17-17-25 provided for the suspension of service or the institution of a civil action for nonpayment of solid waste fees, rates and charges. For the Mississippi Regional Solid Waste Management Authority Act, see §§ 17-17-301 et seq.

§ 17-17-27. Enforcement of chapter; adoption of rules and regulations; revocation of permit; variances; renewals or extensions; public availability of information; application of Trade Secrets Act.

(1) The department shall exercise such supervision over restrictions, equipment, methodology and personnel in the management of solid wastes as may be necessary to enforce sanitary requirements; and the commission shall adopt such rules and regulations as may be needed to specify methodology and procedures to meet the requirements of this chapter, which shall include at a minimum:

(a) Criteria for the determination of whether any waste or combination of wastes is hazardous for the purposes of this chapter;

(b) Rules and regulations for the storage, treatment and disposal of solid wastes;

(c) Rules and regulations for the transportation, containerization and labeling of hazardous wastes, which rules shall be consistent with those issued by the United States Department of Transportation;

(d) Rules and regulations specifying the terms and conditions under which the permit board shall issue, modify, suspend, revoke or deny such permits as may be required by this chapter. Such rules and regulations shall include, and not by way of limitation, specific authority for the permit board to consider the financial capability and performance history of an applicant;

(e) Rules and regulations establishing standards and procedures for the safe storage or transportation of hazardous waste and for the safe operation and maintenance of hazardous waste treatment or disposal facilities or sites or equipment;

(f) A listing of those wastes or combinations of wastes which are not compatible, and which may not be stored or disposed of together;

(g) Procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(h) Standards for financial responsibility to cover the liability, closure and post-closure of any site and perpetual care of a commercial hazardous waste landfill. Rules and regulations promulgated hereunder may include, and not by way of limitation, requirements for maintaining liability insurance coverage if such coverage is not required under rules and regulations promulgated by the United States Environmental Protection Agency;

(i) Rules and regulations establishing minimum distances within which any hazardous waste disposal facility may be located from any municipality, school, residence, church or health care facility;

(j) Other rules and regulations as the commission deems necessary to manage hazardous wastes in the state, provided that such rules and regulations shall be equivalent to the United States Environmental Protection Agency's rules and regulations.

(2) In complying with this section the commission shall consider the variations within this state in climate, geology, population density and such other factors as may be relevant to the management of hazardous wastes. It is the intent of the Legislature that commercial hazardous waste landfills be located on those sites which, by virtue of their geologic conditions, provide a high degree of environmental protection. In carrying out the intent of this provision, the commission is authorized to adopt siting criteria for commercial hazardous waste landfills which are more stringent or extensive in scope, coverage and effect than the rules and regulations promulgated by the United States Environmental Protection Agency.

(3) Except as hereinafter provided, hazardous wastes shall not be disposed of in this state by the use of underground injection methods, as herein defined according to 40 CFR 260.10(74) to mean "subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension." This prohibition shall not apply to the disposal on the generation site of hazardous wastes generated in the production of oil or gas or in a commercial or manufacturing operation. Commercial hazardous waste underground injection wells designed or intended to dispose of multiple nonhomogeneous types of wastes from multiple sources other than the owner of the well are hereby prohibited in the State of Mississippi.

A commercial hazardous waste landfill shall not be located on the same site or within one thousand (1,000) feet of an existing or abandoned ordinary waste disposal site, unless the hazardous waste to be disposed of in said commercial landfill is specifically approved as exempted.

(4) After promulgation of the regulations required under this section, no person shall construct, substantially alter or operate any solid waste treatment or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the permit board

for such facility, site or activity. However, no person shall construct any new hazardous waste treatment or disposal facility or site or substantially alter any such existing facility or site, nor shall the permit board issue a permit for any such construction or alteration, until the commission has promulgated rules and regulations under the provisions of subsection (1)(j) of this section. Said rules and regulations shall be equivalent to counterpart rules and regulations of the Environmental Protection Agency whether now in effect or hereinafter promulgated. Any person who has made an application for a permit for an existing facility under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application has been made unless the cause of such delay is the result of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(5) Any permit issued under this section may be revoked by the issuing agency at any time when the permittee fails to comply with the terms and conditions of the permit. Where the obtaining of or compliance with any permit required under this section would, in the judgment of the department, cause undue or unreasonable hardship to any person, the department may issue a variance from these requirements. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after an opportunity has been given for public comment on each such renewal or extension.

(6) Information obtained by the commission concerning environmental protection including but not limited to information contained in applications for solid or hazardous waste disposal permits shall be public information and shall be made available upon proper request. Other information obtained by the commission, department, or permit board in the administration of Sections 17-17-1 through 17-17-47 concerning trade secrets, including, but not limited to, marketing or financial information, treatment, transportation, storage or disposal processes or devices, methods of manufacture, or production capabilities or amounts shall be kept confidential if and only if: (a) a written confidentiality claim is made when the information is supplied; (b) such confidentiality claim allows disclosure to authorized department employees and/or the United States Environmental Protection Agency (EPA); and (c) such confidentiality claim is determined by the commission to be valid. If the confidentiality claim is denied, the information sought to be covered thereby shall not be released or disclosed, except to the Environmental Protection Agency, until the claimant has been notified in writing and afforded an opportunity for a hearing and appeal therefrom, as with other orders of the commission. Disclosure of confidential information by the EPA shall be governed by federal law and EPA regulations. Misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(7) Anyone making unauthorized disclosure of information determined to be confidential as herein provided shall be liable in a civil action for damages arising therefrom and shall also be guilty of a misdemeanor punishable as provided by law.

(8) Notwithstanding any other provision of this chapter, the executive director, upon receipt of information that the generation, storage, transportation, treatment or disposal of any solid waste may present an imminent and substantial hazard to the public health or to the environment, may take any legal, equitable or other action, including injunctive relief, necessary to protect the health of such persons or the environment.

SOURCES: Laws, 1974, ch. 573, § 6; Laws, 1979, ch. 491, § 3; Laws, 1980, ch. 551, § 1; Laws, 1981, ch. 528, § 8; Laws, 1982, ch. 490, § 1; Laws, 1987, ch. 332, § 1; Laws, 1990, ch. 442, § 11, eff from and after July 1, 1990.

Cross References — Injunction against imminent and substantial hazard to the public health or to the environment, see § 17-17-29.

Entry and inspection of generating, treating, storage, transportation and disposal equipment, facilities, etc., see § 17-17-35.

Applicability of provisions of section to disclosure statements filed by applicants for permits, see § 17-17-503.

Consideration of performance history of public agency applying for permit relating to waste management facilities, see § 17-17-507.

Adoption by municipal governing authorities of rules and regulations for collection and disposal of garbage and rubbish, see § 21-19-1.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Permit board, see § 49-17-28.

Permit hearings and permit appeals, see § 49-17-29.

Hearings before commission regarding violations, see §§ 49-17-31 through 49-17-35.

Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — Hazardous Materials Transportation Uniform Safety Act of 1990, see 49 USCS §§ 5101 et seq.

JUDICIAL DECISIONS

1. In general.

Sections 17-17-1 et seq. clearly delegated authority to the Mississippi Commission on Environmental Quality to enact sufficient rules and regulations to both define "transfer" of a non-hazardous solid waste disposal permit and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

ATTORNEY GENERAL OPINIONS

1992 amendments to Miss. Code Section 17-17-231 do not expressly affect or repeal Miss. Code Section 17-17-27, nor any regulations adopted thereunder. Palmer, Jan. 5, 1993, A.G. Op. #92-0804.

Pursuant to Miss. Code Section 17-17-27, in addition to Miss. Code Section 17-17-231, Commission on Environmental Concerns has adopted numerous regulations affecting municipal solid waste disposal. Palmer, Jan. 5, 1993, A.G. Op. #92-0804.

County board of supervisors does not have authority to preempt DEQ's jurisdiction over landfill permitting authority. Tutor, Feb. 25, 1994, A.G. Op. #94-0097.

RESEARCH REFERENCES

ALR. Proper measure and elements of damages for misappropriation of trade secret. 11 A.L.R.4th 12.

Validity of local regulation of hazardous waste. 67 A.L.R.4th 822.

Necessity and sufficiency of environmental impact statement under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C) in cases involving herbicide, pesticide, and related projects. 74 A.L.R. Fed. 249.

Right to intervene in federal hazardous waste enforcement action. 100 A.L.R. Fed. 35.

Establishing "release or threatened release" of hazardous substance from facility for purposes of liability pursuant to § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607). 120 A.L.R. Fed. 1.

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 7.1 (complaint to compel municipality to apply to state department of environmental protection for approval of plans to close sanitary landfill).

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255, Fall 1991.

§ 17-17-29. Penalties; injunction; recovery of cost of remedial action; disposition of fines.

(1) Any person found by the commission violating any of the provisions of Sections 17-17-1 through 17-17-47, or any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit, shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00) for each violation, such penalty to be assessed and levied by the commission after a hearing. Appeals from the imposition of the civil penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant. Each day upon which such violation occurs shall be deemed a separate and additional violation.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 17-17-1 through 17-17-47, rules and regulations in force pursuant thereto, and orders and permits made and issued under those sections, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard as set forth in Section 17-17-27, it shall not be necessary in such cases that the state plead or prove (a) that irreparable damage would result if the injunction did not issue; (b) that there is no

adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Sections 17-17-1 through 17-17-47, or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such sections, and causes the death of wildlife shall be liable, in addition to the penalties provided in subsections (1) and (2) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the appropriate county or circuit court of the county in which venue may lie.

(4) Any person creating, or responsible for creating, through misadventure, happenstance, or otherwise, an immediate necessity for remedial or clean-up action involving solid waste shall be liable for the cost of such remedial or clean-up action and the commission may recover the cost of same by a civil action brought in the circuit court of the county in which venue may lie. This penalty may be recovered in lieu of or in addition to the penalties provided in subsections (1), (2) and (3) of this section.

In the event of the necessity for immediate remedial or clean-up action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission as provided herein.

(5) Any person who knowingly violates any provision of this chapter or violates any order issued by the commission under the authority of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than Twenty-five Thousand Dollars ($25,000.00) for each day of violation or to imprisonment not to exceed one (1) year, or both. Each day's violation shall constitute a separate offense.

(6) All fines, penalties and other sums recovered or collected by the commission for and in behalf of the state under this section shall be deposited in the Pollution Emergency Fund established by Sections 49-17-61 through 49-17-70, and the commission is authorized to receive and accept, from any and all available sources whatsoever, additional funds to be deposited in such fund and expended for the purpose of remedial, cleanup or abatement actions involving the introduction of solid waste upon or into the land, air or waters of this state in violation of Sections 17-17-1 through 17-17-47, any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit.

(7) In determining the amount of any penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;

(b) Any damage to air, water, land or other natural resources of the state or their uses;

(c) Costs of restoration and abatement;

(d) Economic benefit as a result of noncompliance;

(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public;

(f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a person discovers as a result of a voluntary self-evaluation, information related to noncompliance with an environmental law and voluntarily discloses that information to the department, commission or any employee thereof, the commission shall, to the greatest extent possible, reduce a penalty, if any, determined by the commission, except for economic benefit as a result of noncompliance, to a de minimis amount if all of the following are true:

(i) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person;

(ii) The person making the disclosure initiates the appropriate corrective actions and pursues those corrective actions with due diligence;

(iii) The person making the disclosure cooperates with the commission and the department regarding investigation of the issues identified in the disclosure;

(iv) The person is not otherwise required by an environmental law to make the disclosure to the commission or the department;

(v) The information was not obtained through any source independent of the voluntary self-evaluation or by the department through observation, sampling or monitoring;

(vi) The noncompliance did not result in a substantial endangerment threatening the public health, safety or welfare or the environment; and

(vii) The noncompliance is not a repeat violation occurring at the same facility within a period of three (3) years. "Repeat violation" in this subparagraph means a second or subsequent violation, after the first violation has ceased, of the same statutory provision, regulation, permit condition, or condition in an order of the commission.

(8) Any provision of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

(9) Any person who violates Section 49-17-603, shall, in addition to any other penalties, be subject to the penalties provided in this section.

SOURCES: Laws, 1974, ch. 573, § 7; Laws, 1979, ch. 491, § 6; Laws, 1980, ch. 551, § 2; Laws, 1981, ch. 528, § 9; Laws, 1988, ch. 311, § 2; Laws, 1991, ch. 334, § 1; Laws, 1995, ch. 627, § 5; Laws, 2001, ch. 560, § 3; Laws, 2003, ch. 301, § 4, eff from and after passage (approved Jan. 20, 2003.)

Editor's Note — Some of the sections referred to in § 17-17-29 were repealed. Sections 17-17-21 and 17-17-25 were repealed by Laws 1991, ch. 581, §§ 32 and 33; § 17-17-23 was repealed by Laws 1992, ch. 583, § 21.

Laws, 2003, ch. 301, § 4, provides as follows:

"SECTION 4. The last two subsections were renumbered to be subsections (8) and (9) rather than (9) and (10), the preceding subsection being (7)."

Cross References — Penalties for commission of environmental felony, see § 17-17-67.

Issuance of orders against county or municipal governing body for failure to comply with local nonhazardous solid waste management plan requirements, see § 17-17-227.

Applicability of this section to closure of waste tire collection sites, see § 17-17-405.

Applicability of this section to violations of §§ 17-17-401 through 17-17-445 or rules or regulations, see § 17-17-437.

Power of executive director of department of environmental quality to impose penalties pursuant to this section, see § 49-2-13.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Hearings before commission regarding violations, see §§ 49-17-31 through 49-17-35.

Applicability of penalties set out in this section to violations of permit conditions, regulations or provisions affected by the Mississippi Air and Water Pollution Control Law, see § 49-17-43.

Disposition of fines, penalties or other sums recovered under water pollution abatement grant program, see § 49-17-61.

Pollution Emergency Fund, see § 49-17-68.

Requirement that open top vehicles carrying sand, dirt, gravel or rock be covered, see §§ 63-7-83, 63-7-85.

Penalty for littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Exhaustion of remedies.

1. In general.

An innocent lender can not be held liable under the statute where it has foreclosed on a parcel of real estate with a latent environmental defect and then sold by quitclaim deed that parcel to a third party at a foreclosure sale. Donald v. Amoco Prod. Co., 735 So. 2d 161 (Miss. 1999).

Statute imposing liability on any person creating, or responsible for creating, immediate necessity for remedial or clean-up action involving solid waste does not impose liability on lenders. MidSouth Rail Corp. v. Citizens Bank & Trust Co., 697 So. 2d 451 (Miss. 1997).

2. Exhaustion of remedies.

Upon remand, a circuit court was ordered to determine if a motion to dismiss should have been granted in a case regarding the disposal of wood waste because the owners of certain property could have been required to exhaust their administrative remedies before the Mississippi Department of Environmental Quality (MDEQ), and there was no indication that the MDEQ failed to take action in the case. Georgia-Pacific Corp. v. Mooney, 909 So. 2d 1081 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

The language in subsection (8)(g)(vi) concerning substantial endangerment includes serious harm to the public health, safety, or welfare or to the environment equivalent to the substantial endangerment language in Section 7003 of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.S. § 7003. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

Subsection (8)(g) restricts only the Commission's prosecutorial authority and, therefore, penalties levied by the court are not restricted and the court can impose criminal or civil penalties otherwise provided by law in the prosecution of environmental criminal actions. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-17-31. Provisions supplemental.

The provisions of this chapter are supplemental and in addition to Section 21-19-1 and Sections 19-5-17 through 19-5-27, Mississippi Code of 1972.

SOURCES: Laws, 1974, ch. 573, § 8; Laws, 1991, ch. 581, § 26, eff from and after passage (approved April 12, 1991).

Cross References — Powers of boards of supervisors to provide for disposal of garbage and rubbish, see §§ 19-5-17, 19-5-19.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

§ 17-17-33. Participation in regional solid waste disposal, recycling, and recovery systems authorized.

Counties, municipal and private companies are hereby authorized to participate in applicable approved regional solid waste disposal, recycling and recovery systems.

SOURCES: Laws, 1976, ch. 341, § 1; Laws, 2006, ch. 587, § 3, eff from and after July 1, 2006.

Editor's Note — The preamble to Laws, 1976, ch. 341, reads as follows:

"Whereas, the disposal of solid wastes without undue degradation to the environment, but with the maximum feasible recovery of resource materials, has become a highly technical process which involves substantial capital expense and offers real economy of scale; and

"Whereas, the Tennessee Valley Authority (TVA) and other governmental agencies have under study a system of regional solid waste disposal and resource recovery plants capable of processing the solid wastes collected by local governments; and

"Whereas, systems of this type involve the collection of solid wastes by local governments and the delivery of such wastes across state lines to a designated processing plant or regional disposal facility; and

"Whereas, such organizations would take possession of such collected solid wastes, and would salvage those materials which can be recycled, and would reduce the great mass of the remainder into fuel; and

"Whereas, such cooperative and complementary collection, recovery and disposal operations, appear to be in the best interest of the local governments and of the State of Mississippi; Now, therefore,.

"Be it enacted by the Legislature of the State of Mississippi:"

Cross References — Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

County rubbish and garbage disposal systems generally, see §§ 19-5-17, 19-5-19.

Water, sewer, garbage disposal and fire protection districts in counties generally, see §§ 19-5-151 et seq.

Powers of municipalities as to garbage and rubbish generally, see § 21-19-1.
Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

ALR. Applicability of zoning regulations to waste disposal facilities of state or local governmental entities. 59 A.L.R.3d 1244.

§ 17-17-35. Entry and inspection of generating, treating, storage, transportation and disposal equipment, facilities, etc.

Authorized employees or representatives of the department shall be authorized to enter and inspect generating, treating, storage, transportation and disposal equipment, facilities or sites to determine proper treatment, storage, transportation and/or disposal. Employees and/or representatives of the department shall be authorized to enter and inspect at any time vehicles transporting or disposing of wastes as outlined in this section.

SOURCES: Laws, 1976, ch. 341, § 2; Laws, 1981, ch. 528, § 10; Laws, 1991, ch. 494 § 23, eff from and after passage (approved April 1, 1991).

Cross References — Enforcement of chapter generally, see § 17-17-27.
Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-37. Property rights in solid wastes.

The solid wastes involved shall become the lawful property of the local governments and/or commercial enterprises involved at the point of collection and in the absence of contractual provisions to the contrary, shall become the property of the operator of an approved system upon delivery to such operator whether delivery be at a transfer station or at a processing plant.

SOURCES: Laws, 1976, ch. 341, § 3, eff from and after passage (approved April 14, 1976).

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

§ 17-17-39. Construction or operation of authorized solid waste disposal systems or facilities not impaired.

Nothing in Sections 17-17-33 through 17-17-41 shall be construed to prohibit local governments from the construction or operation of approved sanitary landfills, or of any other heretofore or hereafter approved solid waste disposal system, it being the intent of Sections 17-17-33 through 17-17-41 that their provisions shall be supplementary to, and not restrictive of, any previously authorized solid waste disposal system, facility or operation, nor of any other such system, facility or operation which may be authorized in the future.

SOURCES: Laws, 1976, ch. 341, § 4, eff from and after passage (approved April 14, 1976).

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 7.1 (complaint to compel municipality to apply to state department of environmental protection for approval of plans to close sanitary landfill).

§ 17-17-41. Construction or operation of recycling plants or sale or gift of solid wastes not prohibited.

Nothing in Sections 17-17-33 through 17-17-41 shall be construed to prohibit private enterprise or other agencies from the construction or operation of recycling plants or to prohibit the sale or gift of solid wastes to private enterprise or other agencies by local governments.

SOURCES: Laws, 1976, ch. 341, § 5, eff from and after passage (approved April 14, 1976).

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

§ 17-17-43. Procedures applicable to hearings before commission and permit board.

The procedures whereby the commission or an employee thereof may obtain a hearing before the commission on a violation of any provision of Sections 17-17-1 through 17-17-41 and Section 17-17-47 or of a regulation or of any order of the commission or whereby any interested person may obtain a hearing on matters within the jurisdiction of the commission or a hearing on any order of the commission shall be as prescribed in Sections 49-17-31 through 49-17-41.

Further, all proceedings before the permit board of the bureau of pollution and control shall be conducted in the manner prescribed by Section 49-17-29.

SOURCES: Laws, 1982, ch. 411, § 3, eff from and after passage (approved March 25, 1982).

Editor's Note — A former § 17-17-43 [Laws, 1979, ch. 491, § 1; Repealed by Laws, 1981, ch. 528, § 20, effective July 1, 1981] related to the service of written complaints by the state health officer upon alleged violators of the chapter, and with notices and hearings pursuant thereto.

Some of the sections referred to in § 17-17-43 were repealed. Sections 17-17-21 and 17-17-25 were repealed by Laws 1991, ch. 581, §§ 32 and 33; § 17-17-23 was repealed by Laws 1992, ch. 583, § 21.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 17-17-45. Appeal to chancery court.

In addition to any other remedies that might now be available, any person or interested party aggrieved by an order of the commission or of the permit board of the bureau of pollution control shall have the right to perfect an appeal to the appropriate chancery court in the manner set forth in Sections 49-17-41 and 49-17-29.

SOURCES: Laws, 1982, ch. 411, § 4, eff from and after passage (approved March 25, 1982).

Editor's Note — Laws, 1982, ch. 411, § 4, codified this section as § 17-17-45. Former § 17-17-45, enacted by Laws, 1979, ch. 491, § 5, and repealed by Laws, 1981, ch. 528, § 20, effective from and after July 1, 1981, dealt with appeals to chancery court from decisions of the state board of health on alleged violations of the chapter, with appeals from chancery court to the Supreme Court being allowed.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

JUDICIAL DECISIONS

1. In general.

In reviewing an order by the Mississippi Commission on Environmental Quality (Commission) requiring a county board of supervisors to bring its sanitary landfill into compliance with the closure requirements of the Mississippi Nonhazardous Waste Regulations and imposing a $4000 penalty, a chancellor exceeded the limited scope of review for agency decisions where the chancellor affirmed the Commission's order but modified it by ordering that the penalty be deposited into a separate fund to be spent curing the violations, instead of being paid into the Pollution Emergency Fund as provided by § 49-17-68, and that any funds remaining after closure be returned to the general fund of the county; a penalty should be assessed under the same standard of review as is employed when reviewing other agency findings and actions, and therefore the chancellor had no authority to substitute his own judgment for that of the agency by replacing the penalty with one he felt was more suited to the circumstances. Mississippi Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supvrs., 621 So. 2d 1211 (Miss. 1993).

§ 17-17-47. Exclusive authority of State Oil and Gas Board as to regulation of oil field waste products.

(1) Notwithstanding any other provisions contained in this chapter, the State Oil and Gas Board shall continue to exercise the exclusive authority to make rules and regulations and issue permits governing the noncommercial disposal of oil field waste products and shall continue to exercise the exclusive authority to regulate Class II underground injection wells in accordance with the provisions of Section 53-1-17; provided, however, that to the extent that such oil field exploration and production waste products may likewise constitute hazardous wastes under the provisions of this chapter, such rules and regulations shall be subject to the approval of the commission in order to insure that they are consistent with the requirements of this chapter and the Resource Conservation and Recovery Act of 1976 (Public Law 94-580).

(2) The commission shall have the exclusive authority to regulate the commercial disposal of oil field exploration and production waste products subject to limitations set out in subsection (1) of this section.

SOURCES: Laws, 1979, ch. 491, § 7; Laws, 1981, ch. 528, § 11; Laws, 1991, ch. 605, § 1, eff from and after passage (approved April 15, 1991).

Cross References — Procedures for obtaining hearing before the commission for violation under this section, see § 17-17-43 and §§ 49-17-31 through 49-17-41.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

Authority to regulate commercial disposal of waste products, see § 53-1-17.

Crime of nuclear sabotage, see § 97-25-57.

Federal Aspects — The Resource and Conservation Recovery Act of 1976 is codified at 42 USCS §§ 6901 et seq.

JUDICIAL DECISIONS

1. Jurisdiction.

Contamination complained of by the landowners was deposited on their property in the course of oil and gas exploration and production activities pursuant to a mineral lease, and the contamination resulted from the oil company's noncommercial disposal of oil field exploration and production waste; the contamination resulted directly from oil field exploration and production activities on the property, not via commercial disposition, such that the Mississippi Oil and Gas Board had exclusive authority over noncommercial disposal of oil field exploration and production waste; therefore, the landowners had to assert their claims based on the contamination before the Board before suing privately. Town of Bolton v. Chevron Oil Co., 919 So. 2d 1101 (Miss. Ct. App. 2005).

Mississippi Oil and Gas Board's jurisdiction did not extend to the regulation of commercial disposal of waste products or over claims based on common law. Howard v. Totalfina E&P USA, Inc., 899 So. 2d 882 (Miss. 2005).

§ 17-17-48. Legislative intent as to regulation of radioactive waste disposal facilities.

It is the intent of this Legislature that the Mississippi Energy and Transportation Board shall have jurisdiction over state nuclear waste policy, activities and siting, including the long-term or temporary storage and/or disposal of high-level radioactive and transuranic waste, in accordance with the provisions of Sections 17-17-48 through 17-17-51 and Chapter 49 of Title 57, Mississippi Code of 1972.

SOURCES: Laws, 1980, ch. 480, § 1; Laws, 1982, ch. 474, § 23; Laws, 1983, ch. 505, § 6, eff from and after passage (approved April 12, 1983).

Cross References — Use of salt domes or other geologic structures for disposal of radioactive waste, see § 17-17-49.

Mississippi Department of Economic and Community Development, generally, see §§ 57-39-1 et seq.

RESEARCH REFERENCES

ALR. State regulation of nuclear power plants. 82 A.L.R.3d 751.

Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

§ 17-17-49. Use of salt domes or other geologic structures for disposal of radioactive waste; penalties; enforcement; authorization.

(1) No salt dome or other geologic structures within the jurisdiction of the State of Mississippi shall be the site of long-term or terminal disposal, or long-term storage for high-level radioactive wastes or other high-level radioactive material of any nature by any person, until the state has exhausted its administrative and legislative authority under the provisions of this section and Chapter 49 of Title 57, Mississippi Code of 1972, and the provisions of P.L. 97-425.

(2) Whoever violates the provisions of this section, upon conviction thereof, shall be punished by a fine of One Thousand Dollars ($1,000.00) for each day upon which the violation occurred or by imprisonment in the county jail not to exceed six (6) months, or both. Upon violation or upon reasonable belief of violation of this section, the State Attorney General shall institute proceedings for injunctive relief in the chancery court of the county in which the violation occurred to require the immediate cessation of any testing, on-site evaluation or any other site evaluation or selection procedure regarding possible use of any salt dome or geologic structure within the jurisdiction of the State of Mississippi, the immediate cessation of transportation of high-level radioactive waste or other high-level radioactive material to the site, and the immediate removal from the State of Mississippi of such materials already located on the site.

(3)(a) Any person, governmental entity, or any other entity desiring to use Mississippi salt domes or other geologic structures within the state for the disposal of radioactive wastes shall make notification to the Governor, the Legislature, and, pursuant to the provisions of Sections 17-17-48 through 17-17-51 and Chapter 49 of Title 57, Mississippi Code of 1972, the State Energy and Transportation Board. Such person, governmental entity, or other entity shall include with the aforementioned notification the selection method with evaluative criteria to be used and the methods and procedures of exploration to be used in selecting a site for a disposal facility. Such person, governmental entity, or other entity shall conduct such studies where specifically mandated to do so by this section in coordination with the above-mentioned state agencies, and shall assume the cost of any studies required by this section or required by the state agencies empowered to enforce the provisions of this section, whether or not the agencies or such person or entity actually conducts the study.

(b) Such person, governmental entity, or other entity desiring to establish a waste facility as defined in paragraph (a) of this subsection shall conduct studies as follows to determine the feasibility of using Mississippi salt domes or other geologic structures within the state for the disposal of radioactive wastes. A hydrogeologic and geologic study shall be conducted. All basic data and documentation pertinent to all aspects of such studies together with any conclusions shall be presented as accumulated to the Governor, the Legislature, and, pursuant to the provisions of Sections 17-17-48 through 17-17-51 and Chapter 49 of Title 57, Mississippi Code of 1972, the State Energy and Transportation Board.

(c) Such person, governmental entity, or other entity desiring to establish a waste facility as defined in paragraph (a) of this subsection shall conduct an environmental impact survey in conjunction with the Bureau of Pollution Control of the Department of Natural Resources or its successor. Copies of this completed survey shall be presented to the Governor, the Legislature, and the State Energy and Transportation Board.

(d) Such person, governmental entity, or other entity desiring to establish a waste facility as defined in paragraph (a) of this subsection shall conduct a socioeconomic impact survey in conjunction with the University Research Center. Such survey shall include, but not be limited to, the allocation of costs regarding roads, bridges, relocation of persons and properties, and the effect on local tax revenues. Copies of this completed survey shall be sent to the Governor, the Legislature, and the State Energy and Transportation Board.

(4) Upon the completion of such thorough technological, environmental and socioeconomic studies as required in subsection (3) of this section, the Governor shall consult with representatives of the agencies mentioned herein and with representatives of the affected county, including, but not limited to, the board of supervisors. The Governor shall thereafter determine the advisability of such facility at the proposed site. If the Governor's decision after such consultations is favorable to the establishment of the nuclear waste disposal

site, he shall advise the Legislature of his decision regarding creation of such disposal facility. If the Governor's decision, after such consultations, is not favorable to the establishment of the nuclear waste storage and/or disposal facility, and after the president has recommended a site in the State of Mississippi for development as a repository, test and evaluation facility, interim storage facility or monitored, retrievable storage facility, the Governor shall notify the Legislature of that decision and either the Governor or the Legislature shall prepare and transmit to the Speaker of the United States House of Representatives and the President Pro Tempore of the United States Senate a notice of disapproval of the site recommendation. The notice of disapproval shall contain a statement of those reasons for objection to the site recommendation. All such disposal or storage shall be made in strict adherence to guidelines established by the federal government, the Division of Radiological Health of the State Board of Health and the provisions of this section.

SOURCES: Laws, 1979, ch. 491, § 8; Laws, 1980, ch. 480, § 2; Laws, 1982, ch. 474, § 24; Laws, 1983, ch. 505, § 7; Laws, 1988, ch. 518, § 16, eff from and after July 1, 1988.

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

Cross References — Jurisdiction of Mississippi Energy and Transportation Board over state nuclear waste policy, activities and siting, see § 17-17-48.

Department of Environmental Quality, see §§ 49-2-1 et seq.

State Department of Economic and Community Development, generally, see §§ 57-39-1 et seq.

Issuance of revenue bonds for improvement on state fair grounds, see § 69-5-15.

Federal Aspects — P.L. 97-425 appears generally as 42 USCS §§ 10101 et seq.

RESEARCH REFERENCES

ALR. Tort liability incident to nuclear accident or explosion. 21 A.L.R.3d 1356.

State regulation of nuclear power plants. 82 A.L.R.3d 751.

Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Am Jur. 27A Am. Jur. 2d, Energy and Power Sources § 55.

CJS. 39A C.J.S., Health and Environment § 114, 118-125.

§ 17-17-51. Facilities licensed by the Nuclear Regulatory Commission.

Nothing in Sections 17-17-48 through 17-17-51 or in Chapter 49 of Title 57, Mississippi Code of 1972 prohibits or is intended to prohibit the shipment, receipt, use or on-site storage of nuclear fuel assemblies to a facility licensed by the nuclear regulatory commission, or the transportation from the facility of spent nuclear fuel assemblies to a licensed reprocessing plant or to a licensed away-from-reactor storage facility.

Provided further, that nothing in Sections 17-17-48 through 17-17-51 or in Chapter 49 of Title 57, Mississippi Code of 1972 prohibits or is intended to prohibit the on-site storage of low-level radioactive waste that is generated at a facility licensed by the Nuclear Regulatory Commission.

SOURCES: Laws, 1980, ch. 480, § 3; Laws, 1982, ch. 474, § 25, eff from and after passage (approved April 21, 1982).

Cross References — Jurisdiction of Mississippi Energy and Transportation Board over state nuclear waste policy, activities and siting, see § 17-17-48.

Use of salt domes or other geologic structures for disposal of radioactive waste, see § 17-17-49.

§ 17-17-53. Commercial hazardous and nonhazardous waste facilities to file annual reports and pay disposal fees; fee calculation; disposition of proceeds.

(1) On or before July 15 of each year, the owner or operator of every commercial hazardous waste management facility shall file with the State Tax Commission and the department a statement, verified by oath, showing by category the total amounts of hazardous waste managed for a fee at the facility during the preceding calendar year, and shall at the same time pay to the State Tax Commission a sum equal to:

(a) Ten Dollars ($10.00) per ton for hazardous waste generated and disposed of in the state by landfilling or any other means of land disposal and for hazardous waste generated and stored for one (1) year or more in the state;

(b) Two Dollars ($2.00) per ton for hazardous waste generated and treated in the state and for hazardous waste generated and stored for less than one (1) year in the state; and

(c) One Dollar ($1.00) per ton for hazardous waste generated and recovered in the state.

(2) For all hazardous waste generated outside of the state and received at a commercial hazardous waste management facility during the preceding calendar year, each owner or operator of a commercial hazardous waste management facility shall pay to the State Tax Commission an amount equal to the per-ton fee imposed on the management of out-of-state waste by the state from which the hazardous waste originated, but in any event no less than the per-ton fees described in subsection (1) of this section.

(3) Repealed.

(4) All monies received by the State Tax Commission hereunder shall be appropriated and utilized as follows:

(a) Thirty-five percent (35%) shall be remitted to the Department of Environmental Quality to be held for the perpetual care and maintenance account of commercial facilities for the management of hazardous or nonhazardous solid waste.

(b) Thirty-five percent (35%) shall be remitted to the department to defray costs of the waste minimization program and evaluation of uncontrolled sites.

(c) Subject to the provisions of Section 17-17-55, all other funds shall be paid to the general fund of the municipality or county within which the facility is located.

(5) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for fees under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control.

(6) Each generator of greater than two hundred twenty (220) pounds of hazardous waste in any calendar month, each transporter of hazardous waste, and the owner or operator of any facility for the treatment, storage, recycling or disposal of hazardous waste shall report annually by a date determined by the department on forms provided by the department the types and amounts of hazardous waste generated, managed and/or shipped during the preceding calendar year. To the extent practicable, the department shall adopt forms consistent with biennial report forms used by the United States Environmental Protection Agency.

SOURCES: Laws, 1982, ch. 490, § 2; Laws, 1990, ch. 536, § 2; Laws, 1994, ch. 539, § 1; Laws, 1998, ch. 458, § 1, eff from and after passage (approved March 23, 1998).

Editor's Note — Former subsection (3) related to the term "commercial hazardous waste management facility" as not including certain facilities using hazardous waste as fuel as part of their manufacturing processes and was repealed by its own terms effective on December 31, 1996.

Laws, 1994, ch. 539, § 2, eff from and after July 1, 1994, provides as follows:

"SECTION 2. The State Tax Commission shall cooperate fully with the Department of Environmental Quality and shall furnish information regarding fees on commercial hazardous and nonhazardous waste management facilities to the department."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue, generally, see §§ 27-3-1 et seq.

Mississippi Sales Tax Law, see § 27-65-1, et seq.

Department of Environmental Quality, see §§ 49-2-1 et seq.

RESEARCH REFERENCES

ALR. Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-54. Uncontrolled Site Evaluation Trust Fund.

(1)(a) There is created in the State Treasury a fund to be designated as the Uncontrolled Site Evaluation Trust Fund, referred to in this section as "fund," to be administered by the Executive Director of the Department of Environmental Quality.

(b) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the administration and evaluation of uncontrolled sites, including, but not limited to, the reasonable costs of the following activities:

(i) Reviewing plans, specifications, engineering reports and other documents related to site assessments, preliminary assessments, site investigations, remedial investigations, feasibility studies, remedy selection, remedial design, remedial actions, site specific risk assessments and operation and maintenance;

(ii) Establishing cleanup levels and objectives and risk targets and reviewing cleanup alternatives and technologies;

(iii) Administering the uncontrolled sites program, including, but not limited to, collecting and analyzing data, conducting site inspections and site monitoring activities, maintaining a computerized database, of site inventories and status, and providing any necessary further action or no further action letters;

(iv) Preparing generally applicable or relevant and appropriate requirements or guidance;

(v) Conducting other activities directly related to the administration and evaluation of uncontrolled sites.

(c) Expenditures may be made from the fund upon requisition by the executive director of the department.

(d) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the treasurer to the fund.

(e) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(f) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year.

(2)(a) There is hereby created the Uncontrolled Site Voluntary Evaluation Program to provide for the administration and evaluation of uncontrolled sites. If any person has a legal or equitable interest in a site within the jurisdiction of the uncontrolled sites program at the department, and that site is not currently under expedited review or evaluation, that person may request that the department accelerate such review by considering the site under the voluntary evaluation program. The department shall determine the eligibility of an uncontrolled site for inclusion into the voluntary evaluation program. The site may be placed in the voluntary program if:

(i) The department accepts the site for the voluntary review and evaluation; and

(ii) The person pays to the department the fees as specified in a fee schedule adopted by the commission.

(b) The owner of an uncontrolled site who participates in the voluntary program shall pay all costs of any actions associated with the administration and evaluation of the site.

(c) The commission shall set by order a schedule of fees and costs for the Uncontrolled Site Voluntary Evaluation Program.

(d) All monies collected under this section shall be deposited into the fund.

(3) The commission may delegate to the department responsibility for the collection of uncontrolled site administration and evaluation fees.

(4) All uncontrolled site administration and evaluation fees shall be due before a date specified by the department in an invoice which shall be no less than thirty (30) days following the invoice date. If any part of an uncontrolled site administration and evaluation fees imposed is not paid within thirty (30) days after the due date, a penalty of up to twenty-five percent (25%) of the amount due may be imposed and be added thereto. Any penalty collected under this section shall be deposited into the fund. If the department has to pursue legal action to collect fees incurred, reasonable attorneys' fees and costs may be assessed against the nonpaying party.

(5) Any person required to pay a fee under this section who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with Section 49-17-35. Any hearing shall be in accordance with the provisions of Section 49-17-33.

(6) Fees collected under this section shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.

(7) The department may suspend any activities or actions related to the administration or evaluation of an uncontrolled site if the person fails to meet any condition or requirement or fails to pay any required fees or penalties imposed under the voluntary evaluation program.

(8) Nothing in this section affects any existing program at the department or affects any authority of the commission or department to take any action authorized by law.

SOURCES: Laws, 1996, ch. 488, § 2, eff from and after July 1, 1996.

Editor's Note — Laws of 1996, ch. 488, § 3, eff from and after July 1, 1996, provides as follows:

"SECTION 3. The commission shall promulgate such rules and regulations as it deems necessary to implement this program in accordance with Section 49-2-9."

Cross References — Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, see § 49-35-1 et seq.

§ 17-17-55. Hazardous Waste Facility Site Revolving Fund; purpose of fund; rules and regulations.

There is hereby created within the State Treasury a revolving fund to be known as the "Hazardous Waste Facility Site Revolving Loan Fund," which shall be administered by the Department of Economic and Community Development, for the purpose of making loans to municipalities or counties in which commercial hazardous waste facilities permitted pursuant to Section 49-17-28 et seq. are located. Such loans shall be made for the purpose of constructing roads, railroads, utilities or the purchase and development of lands for industrial purposes. Any municipality or county within which such a facility is sited may make application for a loan from the Hazardous Waste Facility Site Revolving Loan Fund, and the Department of Economic and Community Development is hereby authorized and empowered to adopt and put into effect all reasonable rules and regulations that it may deem necessary to carry out the provisions of this section, which shall include, without limitation, the following:

(a) Procedures for applying for the loans;

(b) Selection criteria for evaluating if a proposed facility meets Mississippi's needs and for choosing between various loan applications;

(c) Procedures for funding and retiring loans; and

(d) Procedures to be followed if default occurs in the repayment of loans.

In addition, the Department of Economic and Community Development is empowered to designate that any part or all of those funds to be disbursed pursuant to Section 17-17-53(2)(c) be paid directly against the principal balance of any loan outstanding hereunder.

SOURCES: Laws, 1982, ch. 490, § 3; Laws, 1990, ch. 506, § 25, eff from and after passage (approved March 31, 1990).

Cross References — Host community designated as site for commercial hazardous waste management facility may obtain loan from this fund, see § 17-18-37.

Department of Economic and Community Development, see §§ 57-1-1 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 17-17-57. Immunity of persons rendering aid in accidents involving discharge of hazardous materials.

(1) For the purposes of this section, the following words shall have the meaning ascribed herein unless the context clearly requires otherwise:

(a) "Discharge" shall include leakage, seepage or other release of any hazardous material.

(b) "Hazardous materials" shall include all materials and substances which are now or hereafter designated or defined as hazardous by any state or federal law or by regulation of any state or federal agency.

(c) "Person" shall include any individual, partnership, corporation, association or other entity.

(2) Notwithstanding any provision of law to the contrary, no person who in good faith and in the exercise of reasonable care, and not in anticipation or expectation of receiving compensation therefor, renders assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any such discharge, shall be subject to civil liabilities or penalties as a result of any act committed in good faith and in the exercise of reasonable care or omission in good faith and in the exercise of reasonable care by such person in rendering emergency assistance, or advice.

(3) Nothing in subsection (2) of this section shall be construed to limit the liability of any person for any act not directly related to the assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any such discharge.

(4) The immunities provided in subsection (2) of this section shall not apply to any person whose act or omission caused in whole or in part such actual or threatened discharge and who would otherwise be liable therefor.

(5) Nothing in subsection (2) of this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence, or from such person's reckless, wanton or intentional conduct.

SOURCES: Laws, 1985, ch. 358, eff from and after July 1, 1985.

Cross References — Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

RESEARCH REFERENCES

ALR. Construction and application of "Good Samaritan" statutes. 68 A.L.R.4th 294.

Tort liability for nonmedical radiological harm. 73 A.L.R.4th 582.

Rescue Doctrine: applicability and application of comparative negligence principles. 75 A.L.R.4th 875.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 1958-1961.

7 Am. Jur. Proof of Facts 3d 415, Imminent Peril Inviting Rescue Attempt.

§ 17-17-59. Moratorium on new or expanded nonhazardous solid waste facilities.

(1) In order to insure adequate capacity to meet local needs for the management of solid wastes generated locally, to protect the public health and welfare of the people of the State of Mississippi and to enable the state to study, consider and implement a comprehensive statewide nonhazardous solid waste management plan, there is hereby imposed a moratorium commencing on April 2, 1990, and ending upon the approval date of a local nonhazardous solid waste management plan for the area within the approved plan on the processing of permit applications, the issuance of permits for new or expanded municipal solid waste facilities and the transfer of existing permits for the incineration, treatment, processing or disposal of municipal solid wastes. Except as otherwise provided in this section, the moratorium shall also apply to all applications for permits and transfers of permits for new or expanded municipal solid waste management facilities and the transfer of existing permits for incineration, treatment, processing or disposal facility pending before the permit board during the moratorium period.

(2) For the purposes of this section, the term "municipal solid waste" means municipal solid waste as defined in Section 17-17-205, but does not include ash or scrubber sludge from the generation of electric power or steam.

(3) The permit board created in Section 49-17-28 is hereby authorized and empowered to make exceptions to the moratorium imposed by this section and allow the processing of permit applications, issuance of permits and the transfer of permits if the permit board, in its discretion, determines that a local need exists for a new or expanded municipal solid waste incinerator, treatment, processing or disposal facility in order to:

(a) Comply with the federal law or regulations of the United States Environmental Protection Agency;

(b) Alleviate or resolve a condition resulting from an existing municipal solid waste facility having reached its capacity for the disposal of locally generated solid wastes;

(c) Alleviate or resolve a condition which threatens or is likely to threaten the environment; or

(d) Alleviate or resolve a condition in which the closure of an existing municipal solid waste facility, or the transfer of an existing permit, is in the best interests of the public in order to adequately manage locally generated municipal solid wastes.

(4) If the permit board grants an exception from the moratorium for a new or expanded municipal solid waste landfill facility for which a permit application is pending on April 2, 1990, the processing of the application for the permit shall resume at the stage of the administrative review process existing on April 2, 1990.

(5) The moratorium imposed by this section shall not apply to:

(a) The processing by personnel of the Mississippi Department of Environmental Quality of permit applications for the recycling of municipal solid wastes up to the time that the personnel of the Mississippi Department of Environmental Quality make their recommendations on such permit applications to the permit board.

(b) Solid waste incineration, treatment, processing or disposal facilities owned and operated by the generator of the solid waste for the incineration, treatment, processing or disposal of the generator's solid waste only.

(c) Applications for reissuance of permits for existing nonhazardous solid waste facilities.

(d) Application for permits for any facility consistent with an approved local nonhazardous solid waste management plan for a county or region.

SOURCES: Laws, 1990, ch. 516, § 1; Laws, 1991, ch. 494, § 17; Laws, 1992, ch. 583 § 2, eff from and after passage (approved May 15, 1992).

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 7.1 (complaint to compel municipality to apply to state department of environmental protection for approval of plans to close sanitary landfill).

§ 17-17-61. Repealed.

Repealed by Laws of 1994, ch. 624, § 7, eff from and after July 1, 1994. [Laws, 1992, ch. 583, § 18]

Editor's Note — Former § 17-17-61 provided procedure for collecting garbage collection and disposal fees. For similar provisions, see § 19-5-18.

§ 17-17-63. Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund [Paragraph (3)(d) repealed effective June 30, 2014].

(1) There is created in the State Treasury a fund designated as the Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund for the purpose of providing funds for emergency, preventive or corrective actions which may be required or determined necessary by the department of any nonhazardous solid waste disposal facility that received in whole or in part household waste and closed before the effective date of Title 40 of the Code of Federal Regulations, Section 258.

(2) The trust fund shall be administered by the executive director. The commission shall promulgate rules and regulations for the administration of the fund and for a system of priorities for related projects eligible for funding. Only the facilities meeting the criteria in subsection (1) are eligible for funding.

(3) The commission may escalate, expend or utilize funds in the trust fund for the following purposes:

(a) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from any source within the permitted area of an eligible facility;

(b) To take preventive or corrective actions where the release of contaminants from any source within the permitted area of an eligible facility which presents an actual or potential threat to human health or the environment including, but not limited to, closure and post-closure care of an eligible facility;

(c) To take any actions as may be necessary to monitor and provide post-closure care of any eligible facility, including preventive and corrective actions, without regard to identity or solvency of the owner thereof; and

(d) To set aside ten percent (10%) annually to provide grants for regional recycling cooperatives formed by local governments for the purpose of jointly participating in the collection, processing and marketing of recyclables. The commission shall establish regulations regarding the eligibility and distribution of the regional recycling cooperative grants. This paragraph (d) shall stand repealed on June 30, 2014.

(4) The fund may not be used to pay for the normal costs of closure and post-closure care of an eligible facility or where no release or substantial threat of a release of contaminants has been found by the commission.

(5) Expenditures may be made from the fund upon requisition by the executive director.

(6) The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the department to the fund, unless funds allocated under Section 17-17-219(3)(a)(i) are being paid to the Local Governments Solid Waste Assistance Fund. If those funds are being paid to the Local Governments Solid Waste Assistance Fund, the department shall credit the earned interest to the Local Governments Solid Waste Assistance Fund.

(7) The fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds and appropriated funds.

(8) The department shall transfer any balance in the fund on July 1, 1997, in excess of Five Million Dollars ($5,000,000.00) to the Local Governments Solid Waste Assistance Fund.

SOURCES: Laws, 1992, ch. 583 § 19; Laws, 1994, ch. 619, § 1; Laws, 1997, ch. 596, § 2; Laws, 2009, ch. 383, § 1, eff from and after July 1, 2009.

Cross References — Local Governments Solid Waste Assistance Fund, see § 17-17-65.

Deposit of portion of funds generated pursuant to provisions governing solid wastes disposal, see § 17-17-219.

§ 17-17-65. Local Governments Solid Waste Assistance Fund.

(1) There is created in the State Treasury a fund designated as the Local Governments Solid Waste Assistance Fund, referred to in this section as "fund," to be administered by the executive director of the department.

(2) The fund shall be used to provide grants to counties, municipalities, regional solid waste management authorities or multicounty entities as provided in subsection (5) of this section for one or more of the following purposes:

(a) Cleanup of existing and future unauthorized dumps on public or private property, subject to the limitation in subsection (4) of this section;

(b) Establishment of a collection center or program for white goods, recyclables or other bulky rubbish waste not managed by local residential solid waste collection programs;

(c) Provision of public notice and education related to the proper management of solid waste, including recycling;

(d) Payment of a maximum of fifty percent (50%) of the cost of employing a local solid waste enforcement officer;

(e) Distribution and use as grants to regional solid waste management authorities, counties and municipalities for implementation of household hazardous waste collection programs, in accordance with Sections 17-17-439 through 17-17-445. The grants shall not exceed seventy-five percent (75%) of eligible project costs as established by the commission;

(f) Development of other local solid waste management program activities associated with the prevention, enforcement or abatement of unauthorized dumps, as approved by the commission; and

(g) Provide assistance to counties and municipalities for the establishment of regional recycling centers at regional correctional facilities.

(3) The commission shall earmark ten percent (10%) of the amount deposited in the fund annually to be used to make grants to counties, municipalities, regional solid waste management authorities or multicounty entities to assist in defraying the cost of preparing solid waste management

plans required by Section 17-17-227. The commission shall award these grants according to the merit of grant proposals received by the commission and the level of need and timeliness of the requirement for the county or regional solid waste management authority to update its solid waste management plan.

(4) If a person is found to be responsible for creating an unauthorized dump, the grantee shall make a reasonable effort to require that person to clean up the property before expending any monies from the fund to clean up the property. If the grantee is unable to locate the person responsible for creating the dump, or if the grantee determines that person is financially or otherwise incapable of cleaning up the property, the grantee may use the monies from the fund to clean up the property and shall make a reasonable effort to recover from the responsible person any funds expended.

(5)(a) Of monies annually deposited in the fund and any balance remaining in the fund, the commission shall annually allocate monies as follows:

(i) One-half (½) of the deposited funds and remaining balance shall be allocated to each county based on the percentage of state aid road mileage as established by the Mississippi Department of Transportation State Aid road formula.

(ii) One-half (½) of the deposited funds and remaining balance shall be made available to counties or municipalities for grants on a competitive basis.

(b) The department shall notify the president of the board of supervisors of each county in writing of the amount allocated under paragraph (a)(i) of this subsection and that additional funds are available on a competitive basis as provided under paragraph (a)(ii) of this subsection.

(c) Upon receipt of a scope of work and cost proposal acceptable to the commission, the commission shall award a grant to a county up to the allocated amount for that county under paragraph (a)(i) of this subsection. The commission may award additional grant funds from monies available under paragraph (a)(ii) of this subsection based upon the acceptable scope of work and cost proposal.

(d) The commission may award grants to a regional solid waste management authority or other multicounty entity upon submission of a consolidated scope of work and cost proposal acceptable to the commission and authorized by the member counties. Upon submission of a scope of work and cost proposal, the commission may award grants to municipalities from monies available under paragraph (a)(ii) of this subsection.

(e) No grantee shall use more than three percent (3%) of funds provided under this section to defray the costs of administration of the grant.

(6) The department may use up to three percent (3%) of monies annually deposited in the fund and of any balance remaining in the fund to provide for the administration of this section.

(7) Expenditures may be made from the fund upon requisition by the executive director of the department.

(8) The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the department to the fund.

(9) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(10) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the succeeding fiscal year.

(11) The commission may consolidate any grant provided under this section with any grant provided under the waste tire management program or the right-way-to-throw-away program. Funds provided through any consolidated grant shall be used in accordance with the program under which the funds are provided.

(12) Funds provided under this section shall not be used to pay any costs of the establishment or operation of a landfill, rubbish disposal site or other type of solid waste disposal facility, for the routine collection of garbage or to collect any fees assessed under Section 19-5-21 or 21-19-2.

(13) The commission shall not provide any funds under this section to any grantee with an inadequate garbage or rubbish collection or disposal system as required under Section 19-5-17 or 21-19-1.

SOURCES: Laws, 1997, ch. 596, § 1; Laws, 2000, ch. 395, § 1; Laws, 2002, ch. 483, § 1; Laws, 2010, ch. 318, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (2)(g); and made minor stylistic changes.

Cross References — Environmental Protection Trust Fund, see § 17-17-217.

Deposit of portion of funds from Nonhazardous Solid Corrective Action Trust Fund, see § 17-17-219.

Right-Way-To-Throw-Away Program, see §§ 17-17-439 et seq.

Mississippi Multimedia Pollution Prevention Program, see § 49-31-11.

ATTORNEY GENERAL OPINIONS

A municipality may apply for grants from the Local Governments Solid Waste Assistance Fund to clean existing and future unauthorized dumps on public or private property; however, county activity pursuant to the statute must be limited to the unincorporated areas of the county. Myers, June 30, 2000, A.G. Op. #2000-0273.

§ 17-17-67. Environmental felony for purposeful or reckless disposition of hazardous waste; penalties.

(1) Any person who purposely or recklessly disposes of any hazardous waste in violation of this chapter which contaminates a drinking water source to the extent that it is unsafe for human consumption, as determined by the state agency charged with the responsibility of regulating safe drinking water for human consumption; or any person who purposely or recklessly disposes of any hazardous waste in violation of this chapter and who knows that he places another person in imminent danger of death or serious bodily injury shall, upon conviction, be guilty of a felony, and shall be subject to imprisonment for a term of not less than one (1) year nor more than ten (10) years, and shall also

be subject to a fine of not less than Five Thousand Dollars ($5,000.00) nor more than Fifty Thousand Dollars ($50,000.00) for each day of violation or both fine and imprisonment. The fine shall not exceed a total of One Million Dollars ($1,000,000.00).

(2) For purposes of this section, a person acts purposely with respect to a material element of an offense when:

(a) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(b) If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(3) For purposes of this section, a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(4) This section shall not apply to any person holding a permit from the Department of Environmental Quality and acting within the scope of that permit.

SOURCES: Laws, 2003, ch. 301, § 5, eff from and after passage (approved Jan. 20, 2003.)

Cross References — Penalties for environmental violations, generally, see § 17-17-29.

Penalties for pollution of waters, streams, or air, see § 49-17-43.

PROMOTION OF PROJECTS FOR TREATMENT OF SOLID AND HAZARDOUS WASTES

SEC.
17-17-101. Legislative intent as to promotion of projects for treatment of solid and hazardous wastes; certificate of public convenience and necessity; approval by Department of Environmental Quality and Mississippi Development Authority required for certain projects.
17-17-103. Definitions.
17-17-105. Powers as to establishment of projects.
17-17-107. Resolution for issuance of revenue bonds; notice of resolution; protest and election.
17-17-109. Notice of election.
17-17-111. Conduct of election.
17-17-113. Determination of election results; time of issuance of bonds.
17-17-115. Bond terms and specifications; validation.
17-17-117. Security for bonds.
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17-17-121. Contracting for projects.
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17-17-125. Covenants required of industries involved in construction or operation of waste treatment projects.

17-17-127. Lease/sale agreements between municipalities and industries.
17-17-129. Use of bond proceeds; cost of project.
17-17-131. Exemption from taxation.
17-17-133. Petition prior to issuance of bonds; approval of petition; relationship with other provisions.
17-17-135. Rules and regulations.

§ 17-17-101. Legislative intent as to promotion of projects for treatment of solid and hazardous wastes; certificate of public convenience and necessity; approval by Department of Environmental Quality and Mississippi Development Authority required for certain projects.

It is the intent of the Legislature by the passage of Sections 17-17-101 through 17-17-135 to authorize municipalities to acquire, own and lease a project for the purpose of promoting the construction and installation of projects for the sale, collection, treatment, processing, reprocessing, generation, distribution, recycling, elimination, or disposal of solid and hazardous waste products, as hereinafter defined, by inducing manufacturing and industrial enterprises, qualified persons, firms, or corporations to locate and construct said projects in this state. It is intended that each project be self-liquidating. Sections 17-17-101 through 17-17-135 shall be construed to conform with its intent. Except as otherwise provided for projects to recycle solid waste products, the powers hereby conferred upon the municipalities shall be exercised only after such municipality has obtained a certificate of public convenience and necessity from the Mississippi Board of Economic Development as provided in Sections 57-1-19, 57-1-21, 57-1-23 and 57-1-27; provided, however, that if a project is constructed solely with revenue bonds the board shall not be required to adjudicate that there are adequate property values and suitable financial conditions so that the total bonded indebtedness of the municipality, solely for the purposes authorized by Sections 17-17-101 through 17-17-135, shall not exceed twenty percent (20%) of the total assessed valuation of the property in the municipality. The powers conferred in this section to municipalities for projects to recycle or sell recycled solid waste products shall be exercised only after such project has been approved by the Department of Environmental Quality and the Mississippi Development Authority.

SOURCES: Laws, 1981, ch. 527, § 1; Laws, 2006, ch. 587, § 4, eff from and after July 1, 2006.

Editor's Note — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the Department of Economic and Community Development.

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management systems, see §§ 17-17-1 et seq.

Participation by counties in regional solid waste disposal and recovery systems, see § 17-17-33.

Nonhazardous solid waste planning, see §§ 17-17-201 et seq.

County establishment and maintenance of rubbish and garbage disposal systems, see §§ 19-5-17, 19-5-19.

Ad valorem tax levy to finance county operated garbage and rubbish disposal system, see §§ 19-5-21, 19-5-23.

Construction grants for solid waste disposal plants and approval thereof by air and water pollution control commission [now the Commission on Environmental Quality], see §§ 49-17-65, 49-17-67.

RESEARCH REFERENCES

ALR. Pollution: liability of municipalities for pollution of subterranean waters. 38 A.L.R.2d 1305.

Dump: liability of municipality for maintenance of public dump as nuisance. 52 A.L.R.2d 1134.

Applicability of zoning regulations to waste disposal facilities of state or local government entities. 59 A.L.R.3d 1244.

Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 189-193, 398-405, 499 et seq., 517-519.

61B Am. Jur. 2d, Pollution Control §§ 237-255.

64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 39A C.J.S., Health and Environment § 77.

62 C.J.S., Municipal Corporations § 339

64 C.J.S., Municipal Corporations §§ 1167 et seq., 1281 et seq., 2118-2120 et seq.

64 C.J.S., Municipal Corporations §§ 1300, 1396.

64A C.J.S., Municipal Corporations § 2118-2120 et seq.

§ 17-17-103. Definitions.

Unless the context clearly requires otherwise, the definitions which follow govern the construction and meaning of the terms used in Sections 17-17-101 through 17-17-135:

(a) "Bonds" shall include notes, bonds and other written obligations authorized to be issued under Sections 17-17-101 through 17-17-135.

(b) "Governing board" shall mean the governing bodies of the several counties and incorporated municipalities of the state as now or hereafter constituted, acting jointly or severally, and in the event that a project is located in more than one (1) county, the term "governing board" shall also refer to the governing bodies of the several counties wherein such project is located.

(c) "Municipality" shall mean one or more counties or incorporated municipalities of this state, or any combination thereof, acting jointly or severally.

(d) "Project" shall mean any real, personal or mixed property of any and every kind that can be used or that will be useful in controlling, collecting, storing, removing, handling, reducing, disposing of, treating and otherwise concerning solid or hazardous waste, including without limitation, property that can be used or that will be useful in extracting and converting waste to energy, encompassing the acquisition, handling, storage, and utilization of coal, lignite or any other fuel or water that can be used or that will be useful in converting waste to energy, and distributing such energy to users thereof, or otherwise separating and preparing waste for reuse.

(e) "Solid wastes" shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(f) "Hazardous wastes" shall mean any waste or combination of waste of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed which are listed by the environmental protection agency as hazardous wastes which exceed the threshold limits set forth in the environmental protection agency regulations for classifying hazardous waste. Such wastes include, but are not limited to, those wastes which are toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means. Such wastes do not include those radioactive materials regulated pursuant to the Mississippi Radiation Protection Law of 1976, appearing in Section 45-14-1 et seq.

(g) "Industry" shall mean any person, firm or corporation operating any enterprise or facility for the collection, treatment, processing, reprocessing, generation, distributing, recycling, elimination or disposal of any type of waste product from which operation conditions result in or pose a substantial present, future or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

(h) "Authority" shall mean the Mississippi Department of Natural Resources.

(i) "Lease/sale" shall mean any agreement without limitation whereby a municipality may lease and/or convey title of a project to an industry, made by and between the governing board and such industry by which such industry agrees to pay to (and to secure if so required) the municipality, or to any assignee thereof, as the case may be, the sums required to meet the payment of the principal, interest and redemption premium, if any, on any bonds, and/or the expenses, if any, of operation by such municipality or county.

(j) "Board" shall mean the Mississippi Board of Economic Development.

SOURCES: Laws, 1981, ch. 527, § 2, eff from and after July 1, 1981.

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

Section 57-1-2 provides that wherever the term "Board of Economic Development" appears in the laws of the State of Mississippi, it shall mean the Department of Economic and Community Development.

Cross References — Regional solid waste management authorities, see §§ 17-17-301 et seq.

Department of natural resources, now Department of Environmental Quality, see §§ 49-2-1 et seq.

Exclusion of any substance regulated as a hazardous waste under this chapter from the definition of "regulated substance" for the purpose of the underground storage tank act, see § 49-17-403.

Board of economic development, now Department of Economic and Community Development, see §§ 57-1-1 et seq.

Federal Aspects — Federal Water Pollution Control Act (also known as the Federal Clean Water Act), see 33 USCS §§ 1251 et seq.

Atomic Energy Act of 1954, see 42 USCS §§ 2011 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 189-193, 398-405, 499 et seq.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 39A C.J.S., Health and Environment § 77.

62 C.J.S., Municipal Corporations § 339.

64 C.J.S., Municipal Corporations §§ 1167 et seq., 1281 et seq., 2118-2120 et seq.

64 C.J.S., Municipal Corporations § 1300, 1396.

64A C.J.S. Municipal Corporations, § 2118-2120.

§ 17-17-105. Powers as to establishment of projects.

Upon compliance with procedures prescribed herein, and subject to the provisions of Sections 17-17-101 through 17-17-135, any municipality is hereby authorized and empowered:

(a) To acquire, purchase, construct, operate, maintain and replace a project;

(b) To enlarge, expand and improve an existing project;

(c) To issue bonds for the purpose of defraying the cost of the projects contemplated by subsections (a) and (b) of this section;

(d) To enter into agreements with any industry situated in the municipality to construct, operate, maintain, repair and replace a project;

(e) To enter into a lease/sale with an industry for the lease and/or sale of a project to such industry;

(f) To accept any state or federal grant that may be available to defray any part of the cost of a project; provided, however, that the agreements contemplated by subsections (d) and (e) of this section shall contain terms and conditions under which the industry shall pay to the municipality, or trustee, if any, for the bonds contemplated by subsection (c) of this section, such sums of money and at such periods as will equal the aggregate of principal, interest and redemption premium, if any, due on the bonds and also the costs, if any, to the municipality of operating, maintaining, insuring, repairing and replacing a project or portions thereof, including a reasonable amount for reserves. Provided further, that any agreement contemplated by subsection (e) of this section shall further contain terms and conditions pursuant to which a project shall be conveyed to the industry.

(g) [Repealed].

SOURCES: Laws, 1981, ch. 527, § 3; Laws, 1990, ch. 586, § 1, eff from and after passage (approved April 9, 1990).

Editor's Note — Subsection (g) was repealed by its own terms, effective from and after April 1, 1991.

Cross References — Provision that payment of principal, interest, and redemption premium on bonds issued under §§ 17-17-101 through 17-17-135 shall be made from moneys derived under agreements specified in subsections (d) and (e) of this section, see § 17-17-115.

Agreement provisions regarding security for bonds, see § 17-17-117.

Covenants required of contracting industries regarding completion, funding, operation and maintenance of projects, see § 17-17-125.

Further terms of lease/sale agreements, see § 17-17-127.

Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

General requirements of and limitations on contracts with counties and municipalities, see §§ 19-13-15, 21-39-3, 31-5-15 et seq., 31-7-47, 31-7-49.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

Public contracts, generally, see §§ 31-1-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 189-193, 398-405, 499 et seq.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 39A C.J.S., Health and Environment § 77.

62 C.J.S. Municipal Corporations, § 339.

64 C.J.S., Municipal Corporations §§ 1167 et seq., 1281, 2118-2120 et seq.

64 C.J.S. Municipal Corporations § 1167, 1281.

64A C.J.S. Municipal Corporations §§ 2118-2120.

§ 17-17-107. Resolution for issuance of revenue bonds; notice of resolution; protest and election.

Before issuing any revenue bonds hereunder, the governing body of any municipality shall adopt a resolution declaring its intention to so issue, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the date upon which the governing body proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county in which such municipality is located. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper be published in such county, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such county, and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in such county. If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the municipality shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as herein provided. If no such protest be filed, then such bonds may be issued without an election at any time within a period of two (2) years after the date specified in the above-mentioned resolution. However, the governing body of such municipality, in its discretion, may nevertheless call an election on the question of the issuance of the bonds, in which event it shall not be necessary to publish the resolution declaring its intention to issue bonds as herein provided.

SOURCES: Laws, 1981, ch. 527, § 4, eff from and after July 1, 1981.

Cross References — Notice of intention to issue county bonds, see § 19-9-11. Initiating procedure for issuance of municipal bonds, see § 21-33-307.

RESEARCH REFERENCES

Am Jur. 61C Am Jur. 2d, Pollution Control §§ 1134-1138, 1151-1159, 1204, 1211, 1239.

64 Am. Jur. 2d, Public Securities and Obligations §§ 118.

CJS. 64A C.J.S., Municipal Corporations §§ 2134-2156, 2512-2527.

§ 17-17-109. Notice of election.

Where an election is to be called as provided in Section 17-17-107, notice of such election shall be signed by the clerk of the governing body of any municipality and shall be published once a week for at least three (3) consecutive weeks, in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county.

SOURCES: Laws, 1981, ch. 527, § 5, eff from and after July 1, 1981.

Cross References — Notice of election on issuance of county bonds, see § 19-9-13. Initiating procedure for issuance of municipal bonds, see § 21-33-307.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 126-129.

CJS. 64A C.J.S., Municipal Corporations §§ 2145-2158.

§ 17-17-111. Conduct of election.

The election provided for in Section 17-17-107 shall be held, as far as is practicable, in the same manner as other elections are held in municipalities. At such election, all qualified electors of such municipality may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE" and the voter shall vote by placing a cross (x) or check mark (√) opposite his choice on the proposition.

SOURCES: Laws, 1981, ch. 527, § 6, eff from and after July 1, 1981.

Cross References — Holding election on issuance of county bonds, see § 19-9-15. Conduct of municipal bond election, see § 21-33-309.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 130-138.

CJS. 64A C.J.S., Municipal Corporations §§ 2148-2156.

§ 17-17-113. Determination of election results; time of issuance of bonds.

When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such municipality and certified by them to the governing body of such municipality, it shall be the duty of such governing body to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the issuance of such bonds, and unless this is the case, then such bonds shall not be issued. Should a majority of the qualified electors who vote thereon in such election vote in favor of the issuance of such bonds, then the governing body of the municipality may issue such bonds, either in whole or in part, within two (2) years from the date of such election, or within two (2) years after the final favorable termination of any litigation affecting the issuance of such bonds, as such governing body shall deem best.

SOURCES: Laws, 1981, ch. 527, § 7, eff from and after July 1, 1981.

Cross References — Results of election with respect to issuance of county bonds, see § 19-9-17.

Results of municipal bond election, see § 21-33-311.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 125, 139-143.

CJS. 64A C.J.S., Municipal Corporations §§ 2156-2159.

§ 17-17-115. Bond terms and specifications; validation.

The bonds issued by a municipality under authority of Sections 17-17-101 through 17-17-135 shall be limited obligations of such municipality. The principal, interest and redemption premium, if any, shall be payable solely out of the moneys to be derived by the municipality pursuant to the agreements specified in subsections (d) and (e) of Section 17-17-105. Revenue bonds and interest coupons issued under authority of Sections 17-17-101 through 17-17-135 shall never constitute an indebtedness of such municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the municipality, or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues; may be in such form and denominations; may be of such tenor; may be in registered or bearer form either as to principal or interest or both; may be payable in such installments and at such time or times not exceeding thirty (30) years from their date; may be subject to such terms of redemption; may be payable at such place or places; may bear interest at such rate or rates as the governing board and the industry shall agree upon, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103; and may contain such other provisions not inconsistent herewith, as the municipality may determine, all of which shall be provided in the proceedings authorizing the bonds. Any revenue bonds issued under the authority of Sections 17-17-101 through 17-17-135 may be sold at public or private sale at such price and in such manner and from time to time as may be determined by the governing board to be most advantageous, and the governing board may pay, as a part of the cost of acquiring any facilities out of the bond proceeds, all expenses, premiums and commissions with the authorization, sale and issuance thereof. All bonds issued under the authority of Sections 17-17-101 through 17-17-135, except registered bonds which are registered otherwise than to bearer, and all interest coupons appurtenant thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance, in the future, of further bonds on a parity with those initially issued. Bonds issued hereunder shall be validated in the chancery court in which the municipality is located.

SOURCES: Laws, 1981, ch. 527, § 8; Laws, 1985, ch. 477, § 1, eff from and after passage (approved April 8, 1985).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The word "muncipality" was changed to "municipality". The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Applicability of this section to terms and specifications of refunding bonds, see § 17-17-119.

Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 148-163.

CJS. 64A C.J.S., Municipal Corporations §§ 2168-2177.

§ 17-17-117. Security for bonds.

The principal, interest and premium, if any, on any bonds shall be secured by a pledge of the revenues payable to the municipality, pursuant to either of the agreements specified in subsections (d) and (e) of Section 17-17-105 and may also, in the case of an agreement under subsection (e) of Section 17-17-105, be secured by a lien which may be subordinate to a prior lien on any other property given as security by the industry pursuant to the lease/sale and any bonds may be issued pursuant to and secured by a trust indenture. The proceedings under which bonds are authorized to be issued or any such trust indenture may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of the sums payable by the industry to the municipality and/or the trustee, if any, as the case may be, pursuant to the lease/sale, the maintenance and insurance of a project, the creation and maintenance of special funds by the industry, and the rights and remedies available in the event of default to the bondholders or to the trustee under such trust indenture, all as the governing board shall deem advisable. Provided, however, that in making any such agreements or provisions, no municipality shall have the power to obligate itself except with respect to any security pledged, mortgaged or otherwise made available by the industry for the securing of revenue bonds, and the application of the revenues from the agreement, made under either subsection (d) or (e) of Section 17-17-105 and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any revenue bonds hereunder and any trust indenture securing such bonds may provide that in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or trust indenture, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon any municipality, or any charge upon its general credit or against its taxing power.

The trustee or trustees under any trust indenture, or any depository specified by such trust indenture, may be such persons or corporations as the governing board shall designate, notwithstanding that they may be nonresidents of Mississippi or incorporated under the laws of the United States or the laws of other states of the United States.

SOURCES: Laws, 1981, ch. 527, § 9, eff from and after July 1, 1981.

Cross References — Applicability of this section to security for refunding bonds, see § 17-17-119.

Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 159.

CJS. 64A C.J.S., Municipal Corporations §§ 2178-2180.

§ 17-17-119. Refunding bonds.

Any revenue bonds issued hereunder and at any time outstanding may at any time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing board may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have been matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby, provided that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this section shall be payable solely from the revenues out of which the bonds to be refunded hereby were payable, and shall be subject to the provisions contained in Section 17-17-115, and may be secured in accordance with the provisions of Section 17-17-117.

SOURCES: Laws, 1981, ch. 527, § 10, eff from and after July 1, 1981.

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 198-204.

CJS. 64A C.J.S., Municipal Corporations §§ 2127-2129, 2186-2190.

§ 17-17-121. Contracting for projects.

Contracts for acquisition, purchase, construction and/or installation of a project contemplated by Sections 17-17-101 through 17-17-135 shall be effected in the manner prescribed by law for public contracts; provided, however, that where (a) the municipality finds and records such finding on its minutes, that because of availability or particular nature of a project, it would not be in the public interest or would less effectively achieve the purposes of Sections 17-17-101 through 17-17-135 to enter into such contracts upon the basis of public bidding pursuant to advertising, (b) the industry concurs in such finding, and (c) such finding is approved by the board, public bidding pursuant to advertisement may be dispensed with and such contracts may be entered into based upon negotiation; and provided further, that the industry, at its option, may negotiate such contracts in the name of the municipality.

SOURCES: Laws, 1981, ch. 527, § 11, eff from and after July 1, 1981.

Cross References — General requirements of and limitations on contracts with counties and municipalities, see §§ 19-13-15, 21-39-3, 31-5-15 et seq., 31-7-47, 31-7-49.

Public contracts, generally, see §§ 33-1-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 189-193, 398, 400-403, 499 et seq.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 1358 et seq.

§ 17-17-123. Finding of necessity required before project is financed.

Prior to undertaking the financing of a project, the governing board shall obtain a finding of the authority that the facility is necessary and that the design thereof will result in the collection, processing, generation, distributing, recycling, elimination and/or disposal of any type of waste product from which operation conditions result in or pose a substantial present, future or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

SOURCES: Laws, 1981, ch. 527, § 12, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 64 C.J.S., Municipal Corporations § 1282.

§ 17-17-125. Covenants required of industries involved in construction or operation of waste treatment projects.

Every agreement under either subsection (d) or (e) of Section 17-17-105 shall contain a covenant obligating the industry to effect the completion of the project if the proceeds of the bonds, including parity completion bonds, if any, prove insufficient, and each such lease/sale shall obligate the industry to make payments which shall be sufficient to:

(a) Pay the principal of and interest on the bonds issued for the project;

(b) Build and maintain any reserves deemed by the governing board to be advisable in connection therewith;

(c) Pay the costs of maintaining the project in good repair and the cost of keeping it properly insured;

(d) Provide proper, sufficient and adequate insurance to cover potential liability that could arise from project operation; and

(e) Provide detailed plans to guarantee an environmentally sound operation and post-closure management of a project.

SOURCES: Laws, 1981, ch. 527, § 13, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

64 Am. Jur. 2d, Public Works and Contracts §§ 80-86, 91 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 1389 et seq.

§ 17-17-127. Lease/sale agreements between municipalities and industries.

Any agreement made under subsection (e) of section 17-17-105 may provide that the project will be owned by the municipality, and leased to the industry; may provide the industry with an option to purchase the project upon such terms and conditions as the governing board and the industry shall agree upon, at a price which represents the fair market value at the time of purchase or may provide that the project shall become the property of the industry upon the acquisition thereof. Any such agreement may also, but is not required to, include a guaranty agreement whereby a corporation, foreign or domestic, other than the industry guarantees in whole or in part the obligations of the industry under the lease/sale upon such terms and conditions as the governing board may deem appropriate.

SOURCES: Laws, 1981, ch. 527, § 14, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 499, 500, 501, 508-510.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

§ 17-17-129. Use of bond proceeds; cost of project.

The proceeds from the sale of any bonds issued under authority of Sections 17-17-101 through 17-17-135 shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of the proceeds shall not be needed for the purpose of which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or interest on the bonds. The cost of acquiring any project shall be deemed to include the following:

(a) The actual cost of the construction of any part of any project which may be constructed, including architect's, engineer's and legal fees;

(b) The purchase price of any land necessary therefor;

(c) The purchase price of any part of any project that may be acquired by purchase;

(d) All expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

(e) The interest on the bonds for a reasonable time prior to construction, during construction, and for not exceeding one (1) year after completion of the construction.

SOURCES: Laws, 1981, ch. 527, § 15, eff from and after July 1, 1981.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (c). The word "required" was changed to "acquired" so that "The purchase price of any part of any project that may be required by purchase;" now reads as "The purchase price of any part of any project that may be acquired by purchase;". The Joint Committee ratified the correction at its August 5, 2008 meeting.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 514-515, 517-519.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

CJS. 64A C.J.S., Municipal Corporations §§ 2122, 2123, 2125.

§ 17-17-131. Exemption from taxation.

The bonds authorized by Sections 17-17-101 through 17-17-135 and the income therefrom, all trust indentures and mortgages executed as security therefor, all lease agreements made pursuant to the provisions hereof, and all projects, when owned by the municipality, and the revenues derived from any agreement with respect thereto shall be exempt from all taxation by the state of Mississippi, and by any political subdivision thereof, except for inheritance, estate or transfer taxes and except further the contractors tax levied by Section 27-65-21.

SOURCES: Laws, 1981, ch. 527, § 16, eff from and after July 1, 1981.

Cross References — Industrial exemptions from sales tax, see § 27-65-101.

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance allowing tax exemption for property used in pollution control. 65 A.L.R.3d 434.

§ 17-17-133. Petition prior to issuance of bonds; approval of petition; relationship with other provisions.

No bonds shall be issued pursuant to the provisions of Sections 17-17-101 through 17-17-135 until the proposal of the governing board to issue the bonds shall receive the approval of the board. Whenever the governing board shall propose to issue bonds pursuant to the provisions of Sections 17-17-101 through 17-17-135, it shall file its petition with the board, setting forth the following:

(a) A description of the project proposed to be undertaken;

(b) A statement setting forth the action taken by the Department of Natural Resources in connection with the project;

(c) A reasonable estimate of the cost of the project;

(d) A general summary of the terms and conditions of the lease/sale; and

(e) Financial statements on lessee company.

Upon the filing of the petition the board shall, as soon as practicable, make such investigation as it deems advisable, and if it finds that the proposed project is intended to promote the purposes of Sections 17-17-101 through 17-17-135 and may be reasonably anticipated to effect such result, it shall be authorized to approve the projects.

Authority hereby vested in any governing board to issue, and the board to approve, bonds pursuant to and in accordance with Sections 17-17-101 through 17-17-135 is supplemental to, and may be exercised in connection with Sections 57-1-1 through 57-1-51, 57-1-71 through 57-1-83, 57-1-101 through

57-1-107, 57-3-1 through 57-3-33 and 57-5-1 through 57-5-23, it being the intent of Sections 17-17-101 through 17-17-135 that the bonds authorized by Sections 57-1-1 through 57-1-51, 57-1-101 through 57-1-107, 57-3-1 through 57-3-33 and 57-5-1 through 57-5-23 may be used for the purposes set forth in Sections 17-17-101 through 17-17-135 under the existing terms and conditions authorizing issuance of same, except that the governing board shall not be authorized to exercise the power of eminent domain to acquire property.

SOURCES: Laws, 1981, ch. 527, § 17, eff from and after July 1, 1981.

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

§ 17-17-135. Rules and regulations.

The board is hereby authorized and empowered to adopt and put into effect all reasonable rules and regulations that it may deem necessary to carry out the provisions of Sections 17-17-101 through 17-17-135, not inconsistent herewith.

SOURCES: Laws, 1981, ch. 527, § 18, eff from and after July 1, 1981.

LOCATION AND PERMITTING OF COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITIES

Sec.	
17-17-151.	Demonstration of need by applicants for permits to operate commercial hazardous waste management facilities; factors considered by Permit Board in evaluating need for facilities; denial of permits; adoption of criteria and standards for location and permitting of facilities.
17-17-153.	Legislative findings and declaration of policy as to siting and permitting of hazardous waste management facilities.

§ 17-17-151. Demonstration of need by applicants for permits to operate commercial hazardous waste management facilities; factors considered by Permit Board in evaluating need for facilities; denial of permits; adoption of criteria and standards for location and permitting of facilities.

(1) Each application for the issuance of a permit to operate a commercial hazardous waste management facility shall be accompanied by a demonstration of need for that facility in the anticipated service area, which shall be of the form and content as the Permit Board may prescribe. Applications for the

reissuance, transfer or modification of previously issued permits, except modifications seeking an increase in the volume of hazardous waste to be managed on an annual basis, shall not be subject to the requirements of this section.

(2) The demonstration of need shall be specific as to the types of hazardous waste to be managed and shall include, but not be limited to:

(a) Documentation of the available capacity at existing commercial hazardous waste management facilities in the area to be served by the facility;

(b) Documentation of the current volume of hazardous waste generated in the area to be served by the facility and the volume of hazardous waste reasonably expected to be generated in the area to be served over the next twenty (20) years; and

(c) A description of any additional factors, such as physical limitations on the transportation of the hazardous waste or the existence of additional capacity outside the area to be served which may satisfy the projected need.

(3) The Permit Board shall consider the following factors in evaluating the need for the proposed facility:

(a) The extent to which the proposed commercial hazardous waste management facility is in conformance with the Mississippi Capacity Assurance Plan and any interstate or regional agreements associated therewith;

(b) An approximate service area for the proposed facility which takes into account the economics of hazardous waste collection, transportation, treatment, storage and disposal;

(c) The quantity of hazardous waste generated within the anticipated service area suitable for treatment, storage or disposal at the proposed facility;

(d) The design capacity of existing commercial hazardous waste management facilities located within the anticipated service area of the proposed facility; and

(e) The extent to which the proposed facility is needed to replace other facilities, if the need for a proposed commercial hazardous waste management facility cannot be established under paragraphs (a) through (d).

(4) Based on the needs of the State of Mississippi, it is the intent of the Legislature that there shall not be a proliferation of unnecessary facilities in any one (1) county of the state.

(5) If the Permit Board determines that a proposed commercial hazardous waste management facility is inconsistent with or contradictory to the factors set forth in subsection (3), the Permit Board is hereby empowered to deny any permit for such facility.

(6) The commission shall develop and adopt criteria and standards to be considered in location and permitting of commercial hazardous waste management facilities. The standards and criteria shall be developed through public participation, shall be enforced by the Permit Board and shall include, in addition to all applicable state and federal rules and regulations, consideration of:

(a) Hydrological and geological factors such as flood plains, depth to water table, soil composition and permeability, cavernous bedrock, seismic activity, and slope;

(b) Natural resource factors such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;

(c) Land use factors such as local land use, whether residential, industrial, commercial, recreational or agricultural, proximity to public water supplies, and proximity to incompatible structures such as schools, churches and airports;

(d) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation; and

(e) Aesthetic factors such as the visibility, appearance and noise level of the facility.

SOURCES: Laws, 1991, ch. 561, § 3; Laws, 1997, ch. 313, § 1, eff from and after July 1, 1997.

Cross References — Disposal of hazardous wastes generally, see § 17-17-15.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

§ 17-17-153. Legislative findings and declaration of policy as to siting and permitting of hazardous waste management facilities.

(1) The Legislature finds that:

(a) The beauty and quality of Mississippi's environment and the public health, safety and welfare of the citizens of the State of Mississippi must be protected from unsound waste management practices which might result from lack of access to proper hazardous waste management facilities.

(b) Inefficient and improper methods of managing waste create hazards to public health, cause pollution of the lands, air and water resources, and constitute a waste of natural resources.

(c) It is the policy of the State of Mississippi that the generation of waste should be reduced or eliminated at the source, whenever feasible; waste that is generated should be recycled or reused, whenever feasible; waste that cannot be reduced, recycled or reused should be treated in an environmentally safe manner; and disposal should be employed only as a last resort and should be conducted in an environmentally safe manner.

(d) It is a requirement under Section 104(c)(9) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub.L. No. 96-510, 94 Stat. 2767, 42 U.S.C.S. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No.

99-499, 100 Stat. 1613, as amended, as a condition of receiving nonemergency federal remedial action funding after October 17, 1989, that each state assure that it has adequate capacity to manage the hazardous waste generated in the state and expected to be generated in the state for the next twenty (20) years.

(e) In response to the federal requirement for hazardous waste capacity assurance, the State of Mississippi has developed and submitted its Capacity Assurance Plan to the U.S. Environmental Protection Agency. The Capacity Assurance Plan sets out the state's need with respect to the types of hazardous waste management required by the state and the proposal for siting needed facilities.

(2) It is the intent of the Legislature that proper facilities must be sited as needed for the management of hazardous waste to meet the needs of Mississippi generators, and allow maximum effective use of regional hazardous waste management facilities; however, the Legislature believes that these objectives should be accomplished without Mississippi becoming a magnet for the hazardous waste from all other states and without the proliferation of unnecessary and unsafe facilities in this state.

SOURCES: Laws, 1991, ch. 561, § 4, eff from and after July 1, 1991.

Federal Aspects — Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is codified at 42 USCS § 9604.

The Superfund Amendments and Reauthorization Act of 1986, referred to in this section, is compiled primarily in 42 U.S.C. § 6926 et seq., with parts compiled also in titles 10, 26, 29 and 33 U.S.C.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

NONHAZARDOUS SOLID WASTE PLANNING ACT OF 1991

Sec.

17-17-201. Short title.
17-17-203. Legislative findings and intent.
17-17-205. Definitions.
17-17-207. Molding or imprinting of plastic bottles or containers with symbols indicating plastic resin used in producing bottle or container; specification of symbols; maintenance and distribution of list of symbols.
17-17-209. Imposition of bans, deposits or taxes on plastic bottles and containers by municipalities, etc.
17-17-211. Penalties for violations of § 17-17-207; injunctions.
17-17-213. Rules and regulations.
17-17-215. Disposition of compost not conforming to criteria prescribed by Commission.
17-17-217. Environmental Protection Trust Fund.
17-17-219. Filing by owners or operators of commercial facilities managing municipal solid wastes of annual statements of waste received and managed;

per-ton fees imposed on management of waste; daily record of waste delivered to facilities; annual aggregate report of wastes received at facilities.
17-17-221. Development and administration of state nonhazardous solid waste management plan; goals and contents; updating of plan.
17-17-223. Development of planning guidance and forms for local nonhazardous solid waste management plans.
17-17-225. Establishment of criteria for evaluation of local nonhazardous solid waste management plans.
17-17-227. County adoption of local nonhazardous solid waste management plan; contents; municipality participation; interlocal agreements; notice, ratification, review and implementation; alternative procedure for modifications; department to maintain copies; noncompliance with publication requirements.
17-17-229. Facility permits for nonhazardous solid waste management; application requirements and criteria.
17-17-231. Adoption of rules and regulations governing municipal sanitary landfills.
17-17-233. Establishment, collection and disposition of fees, surcharges, etc., to produce resources for closure of landfills and post-closure monitoring and remediation.
17-17-235. Proof of financial responsibility by owner or operator of sanitary landfill in lieu of requirements of § 17-17-233.

§ 17-17-201. Short title.

Sections 17-17-201 through 17-17-235 shall be known and may be cited as the "Nonhazardous Solid Waste Planning Act of 1991."

SOURCES: Laws, 1991, ch. 494, § 1, eff from and after passage (approved April 1, 1991).

Cross References — Solid waste disposal generally, see §§ 17-17-1 et seq.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Hazardous waste facility siting, see §§ 17-18-1 et seq.

Powers of boards of supervisors to provide for disposal of garbage and rubbish, see §§ 19-5-17, 19-5-19.

Construction grants for solid waste disposal plants, see §§ 49-17-65, 49-17-67.

Duties of Department of Economic and Community Development, see § 49-31-17.

Federal Aspects — Solid Waste Disposal Act, see 42 USCS §§ 6901 et seq.

State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 398, 400-403.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

CJS. 39A C.J.S., Health and Environment § 77.

§ 17-17-203. Legislative findings and intent.

(1) The Legislature finds that:

(a) Over one million five hundred thousand (1,500,000) tons of municipal solid waste are generated in Mississippi each year of which an estimated fifty thousand (50,000) tons is not even collected for disposal;

(b) On the average, each Mississippian currently discards approximately four (4) pounds of municipal solid waste each day;

(c) There are currently ninety-eight (98) commercial nonhazardous solid waste management facilities in this state;

(d) Most of the permitted sanitary landfill capacity will be used within the next ten (10) years;

(e) Monthly household collection fees have increased approximately fifteen percent (15%) in the last year. The costs of nonhazardous solid waste management will increase significantly due to decreased landfill capacity and more stringent federal requirements for nonhazardous solid waste management facilities. More stringent federal requirements may force an estimated eighty percent (80%) of the existing permitted facilities to close;

(f) Mississippians are spending approximate Fifty-five Million Dollars ($55,000,000.00) on nonhazardous solid waste management;

(g) Inefficient and improper methods of managing nonhazardous solid waste create hazards to the public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values and create public nuisances;

(h) Problems of nonhazardous solid waste management have become a matter statewide in scope and necessitate state action to assist local governments in identifying, financing, and improving methods and processes for more efficient management and collection of nonhazardous solid waste; and

(i) The economic and population growth of our state and improvements in the standard of living enjoyed by our population have resulted in a rising tide of unwanted and discarded materials.

(2) It is the intent of the Legislature that the provisions of Sections 17-17-201 through 17-17-235 shall:

(a) In order to protect the public health, safety and well-being of its citizens and to protect and enhance the quality of its environment, institute and maintain a comprehensive program for state and local solid waste management planning which will assure that solid waste management facilities meet the needs of the state and its localities, whether publicly or privately operated, are planned, developed and constructed in a timely manner;

(b) Reaffirm the state's policy of minimizing the amount of nonhazardous solid waste being generated and managed at facilities in the state and the commitment to reach the state's goal of reducing and minimizing waste generated in Mississippi by a minimum of twenty-five percent (25%) by January 1, 1996;

(c) Provide that a county shall have the power and its duty shall be to ensure the availability of adequate permitted management capacity for the nonhazardous solid waste which is generated within its boundaries;

(d) Establish that a municipality shall have the power and its duty shall be to assure the proper and adequate collection, transportation and storage of the nonhazardous solid waste generated or present within the area served by such municipality and in cooperation with the county, to assure adequate capacity for the processing, recycling and disposal of nonhazardous solid waste generated or present within the area served by such municipality; and

(e) Reaffirm that the state shall have the power and its duty shall be to regulate the management of nonhazardous solid waste and ensure that all nonhazardous solid waste management planning results in strategies for environmentally sound nonhazardous solid waste management systems.

(3) It is further the intent of the Legislature that, in light of the impending issuance of the Final Subtitle D regulations, the existing laws and regulations with regard to permitted sanitary landfills should be consistently enforced.

SOURCES: Laws, 1991, ch. 494, § 2; Laws, 2006, ch. 587, § 5, eff from and after July 1, 2006.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-205. Definitions.

(a) "Closure" means the ceasing operation of a sanitary landfill and securing the landfill so that it does not pose a significant threat to public health or the environment and includes long-term monitoring and maintenance of the landfill.

(b) "Label" means a molded, imprinted or raised symbol on or near the bottom of a plastic container or bottle.

(c) "Local government" means a county or a municipality within the State of Mississippi.

(d) "Municipal solid waste" means any nonhazardous solid waste resulting from the operation of residential, commercial, governmental, industrial or institutional establishments except oil field exploration and production wastes and sewage sludge.

(e) "Owner" or "operator" means any person, corporation, county, municipality or group of counties or municipalities acting jointly operating a sanitary landfill or having any interest in the land whereon a sanitary landfill is or has been located.

(f) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

(g) "Plastic bottle" means a plastic container intended for single use that:

(i) Has a neck smaller than the body of the container;

(ii) Is designed for a screw-top, snap cap or other closure; and

(iii) Has a capacity of not less than sixteen (16) fluid ounces or more than five (5) gallons.

(h) "Rigid plastic container" means any formed or molded container intended for single use, composed predominately of plastic resin, that has a relatively inflexible finite shape or form with a capacity of not less than eight (8) ounces or more than five (5) gallons. This term does not include a plastic bottle.

SOURCES: Laws, 1991, ch. 494, § 3, eff from and after passage (approved April 1, 1991).

Cross References — Application of definition of "municipal solid waste" in this section to provision for moratorium on new or expended nonhazardous solid waste facilities, see § 17-17-59.

§ 17-17-207. Molding or imprinting of plastic bottles or containers with symbols indicating plastic resin used in producing bottle or container; specification of symbols; maintenance and distribution of list of symbols.

(1) This section and any rules or regulations adopted hereunder shall be interpreted to conform with nationwide plastics industry standards.

(2) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container. A plastic bottle or rigid container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(3) The symbols used under this section must consist of a number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three (3) arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(4) The numbers, letters of the symbols and the plastic resins represented by the symbols are:

(a) 1 and PETE, representing polyethylene terephthalate;

(b) 2 and HDPE, representing high density polyethylene;

(c) 3 and V, representing vinyl;

(d) 4 and LDPE, representing low density polyethylene;

(e) 5 and PP, representing polypropylene;

(f) 6 and PS, representing polystyrene;

(g) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(5) The department shall:

(a) Maintain a list of the symbols; and

(b) Provide a copy of that list to any person on request.

SOURCES: Laws, 1991, ch. 494, § 5, eff from and after passage (approved April 1, 1991).

Cross References — Penalties for violations of this section, see § 17-17-211.
Duties of Department of Environmental Quality generally, see § 49-2-7.

§ 17-17-209. Imposition of bans, deposits or taxes on plastic bottles and containers by municipalities, etc.

Sections 17-17-201 through 17-17-235 shall not be construed to allow any municipality, county or other political subdivision to impose a ban, deposit or tax on plastic containers and bottles.

SOURCES: Laws, 1991, ch. 494, § 6, eff from and after passage (approved April 1, 1991).

Cross References — Requirement of labeling on bottles and containers indicating plastic resins used in producing bottle or container, see § 17-17-207.

§ 17-17-211. Penalties for violations of § 17-17-207; injunctions.

After being notified by the department that a plastic container does not comply with the provisions of Section 17-17-207, a person who violates Section 17-17-207, is subject to a civil penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each day of violation and may be enjoined from such violations.

SOURCES: Laws, 1991, ch. 494, § 7, eff from and after passage (approved April 1, 1991).

§ 17-17-213. Rules and regulations.

(1) Not later than October 1, 1991, the Commission on Environmental Quality shall promulgate rules and regulations establishing standards for the production of compost. The commission may modify, repeal, make exceptions to and grant exceptions and variances from such rules and regulations. Such rules and regulations shall include, but not be limited to, the following:

(a) Requirements necessary to produce hygienically safe compost products for varying applications.

(b) A classification scheme for compost based on the types of waste composted, including at least one (1) type containing only yard trash; the maturity of the compost, including at least three (3) degrees of decomposition for fresh, semimature and mature; and the levels of organic and inorganic constituents in the compost. This scheme shall address:

(i) Methods for measurement of the compost maturity;

(ii) Particle sizes;

(iii) Moisture content; and

(iv) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Commission on Environmental Quality establishes, and the analytical methods to determine those levels.

(2) Not later than January 1, 1992, the Commission on Environmental Quality shall promulgate rules and regulations prescribing the allowable uses and application rates of compost based, at a minimum, on the following criteria:

(a) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.

(b) The allowable uses of compost based on maturity and type of compost.

SOURCES: Laws, 1991, ch. 494, § 8, eff from and after passage (approved April 1, 1991).

Cross References — Disposition of compost not conforming to criteria prescribed by Commission, see § 17-17-215.

Duties of Commission on Environmental Quality generally, see § 49-2-9.

§ 17-17-215. Disposition of compost not conforming to criteria prescribed by Commission.

If compost is produced which does not meet the criteria prescribed by the Commission on Environmental Quality for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Commission on Environmental Quality, unless a different application is specifically authorized by the Commission on Environmental Quality.

SOURCES: Laws, 1991, ch. 494, § 9, eff from and after passage (approved April 1, 1991).

Cross References — Promulgation by Commission of rules and regulations governing production, allowable uses and application rates of compost, see § 17-17-213.

Powers and duties of Commission of Environmental Quality, generally, see § 49-2-9.

§ 17-17-217. Environmental Protection Trust Fund.

(1) There is created in the State Treasury a fund designated as the Environmental Protection Trust Fund, to be administered by the executive director of the department.

(2) The Commission on Environmental Quality shall promulgate rules and regulations for the administration of the fund and for a system of priorities for any related projects or programs eligible for funding from the fund.

(3) The commission may utilize any funds in the Environmental Protection Fund for defraying the costs of the Department of Environmental Quality for administering the nonhazardous waste program, including the development of the state nonhazardous solid waste management plan as authorized by law. The commission may also use the fund to accomplish the purposes of the multimedia pollution prevention program created under Section 49-31-11.

(4) Expenditures may be made from the fund upon requisition by the executive director of the department.

(5) The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the department to the fund.

(6) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds.

SOURCES: Laws, 1991, ch. 494, § 10; Laws, 1992, ch. 583 § 3; Laws, 2000, ch. 395, § 2; Laws, 2002, ch. 483, § 2, eff from and after July 1, 2002.

Cross References — Local Governments Solid Waste Assistance Fund, see § 17-17-65.

Remittances to fund, see § 17-17-219.

Right-Way-To-Throw-Away Program, see §§ 17-17-439 et seq.

Powers and duties of Commission of Environmental Quality generally, see § 49-2-9.

Powers and duties of executive director of Department of Environmental Quality generally, see § 49-2-13.

Mississippi Multimedia Pollution Prevention Program, see § 49-31-11.

§ 17-17-219. Filing by owners or operators of commercial facilities managing municipal solid wastes of annual statements of waste received and managed; per-ton fees imposed on management of waste; daily record of waste delivered to facilities; annual aggregate report of wastes received at facilities.

(1) Before July 15 of each year the operator of a commercial nonhazardous solid waste management facility managing municipal solid waste shall file with the State Tax Commission and the department a statement, verified by oath, showing the total amounts of nonhazardous solid waste managed at the facility during the preceding calendar year, and shall at the same time pay to the State Tax Commission One Dollar ($1.00) per ton of municipal solid waste generated and managed in the state by landfilling or incineration, including waste-to-energy management. The fee shall not be levied upon rubbish which is collected and disposed separately from residential or household waste and which is not managed for compensation. For ash and sludges which contain a significant amount of water, the fee may be calculated on a dry ton basis.

(2)(a) Before July 15 of each year, the operator of a commercial nonhazardous solid waste management facility managing municipal solid waste shall file with the State Tax Commission and the department a statement, verified by oath, showing the total amounts of solid waste received from out of state and managed at the facility during the preceding calendar year.

(b) Before July 15 of each year, the operator of a commercial nonhazardous solid waste management facility managing municipal solid waste located in this state shall pay to the State Tax Commission an amount equal to the greater of the per-ton fee imposed on the management of out-of-state nonhazardous solid waste by the state from which the nonhazardous solid waste originated or the per-ton fee, if any, imposed on the management of nonhazardous solid waste by this state. The sum shall be based on the total amounts of nonhazardous solid waste managed at the facility during the preceding calendar year and shall be paid to the State Tax Commission at the same time that reports are filed under subsection (2)(a) of this section.

(3) Except as provided in subsection (6) of this section, all monies received by the State Tax Commission as provided in this chapter shall be allocated as follows:

(a) Fifty percent (50%) shall be remitted to the Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund; and

(b) Fifty percent (50%) shall be remitted to the Environmental Protection Trust Fund.

(4) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for fees under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control.

(5)(a) The operator of a commercial nonhazardous solid waste management facility managing municipal solid waste shall keep an accurate written daily record of deliveries of solid waste to the facility as required by the department, including, but not limited to, the name of the hauler, the source of the waste, the types of waste received and the weight of solid waste measured in tons received at the facility. A copy of these records shall be maintained at the site by the operator and shall be made available to the department for inspection upon request.

(b) The operator shall file with the department annually, on such forms as the department may prescribe, a report providing aggregate information on the types, amounts and sources of waste received at the facility during the preceding calendar year. The State Tax Commission and the department shall share information provided under this section.

(6) When the unobligated balance in the Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund reaches or exceeds Three Million Five Hundred Thousand Dollars ($3,500,000.00), the department shall pay funds allocated under Section 17-17-219(3)(a) to the Local Governments Solid Waste Assistance Fund created under Section 17-17-65 on the next scheduled

payment date. After July 1, 2000, the department may transfer any unobligated balance in the Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund exceeding Three Million Five Hundred Thousand Dollars ($3,500,000.00) to the Local Governments Solid Waste Assistance Fund. When the unobligated balance is reduced below Two Million Dollars ($2,000,000.00), the department shall reduce payments to the Local Governments Solid Waste Assistance Fund to two-thirds (⅔) of the funds allocated under Section 17-17-219(3)(a) and shall pay the remaining one-third (⅓) of the funds allocated under Section 17-17-219(3)(a) to the Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund until the time as that fund balance reaches or exceeds Three Million Five Hundred Thousand Dollars ($3,500,000.00).

SOURCES: Laws, 1991, ch. 494, § 11; Laws, 1992, ch. 583 § 4; Laws, 1996, ch. 488, § 1; Laws, 1997, ch. 596, § 3; Laws, 1998, ch. 458, § 2; Laws, 2000, ch. 395, § 3; Laws, 2002, ch. 483, § 3, eff from and after July 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Nonhazardous Solid Waste Facility Corrective Action Trust Fund, see § 17-17-63.

Local Governments Solid Waste Assistance Fund, see § 17-17-65.

Environmental Protection Trust Fund, see § 17-17-217.

Collection of fees, surcharges, etc., by owners or operators of sanitary landfills, see § 17-17-233.

Right-Way-To-Throw-Away Program, see §§ 17-17-439 et seq.

Mississippi Sales Tax Law, see § 27-65-1, et seq.

Mississippi Multimedia Pollution Prevention Program, see § 49-31-11.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-221. Development and administration of state nonhazardous solid waste management plan; goals and contents; updating of plan.

(1) The department may develop a state nonhazardous solid waste management plan. The state nonhazardous solid waste management plan shall utilize the information, conclusions and recommendations of the approved local nonhazardous solid waste management plans.

(2) If developed, the state nonhazardous solid waste management plan shall include, at a minimum, the following:

(a) An identification and analysis of the amounts and types of municipal solid waste from all sources which is generated in the state or transported into the state for management;

(b) An inventory and evaluation of all existing and planned municipal solid waste management facilities, including their permit status and the remaining capacity of existing facilities;

(c) An inventory of open and unauthorized dumps and a strategy for closing such sites;

(d) A strategy for achieving the twenty-five percent (25%) waste reduction goal through source reduction, recycling or other waste reduction technologies;

(e) A projection, using acceptable averaging methods, of municipal solid waste generated annually by each county over the next twenty (20) years and an evaluation of the adequacy of existing capacity to handle the anticipated projected volume and composition of waste;

(f) Information, conclusions and recommendations in local nonhazardous solid waste management plans for future facilities;

(g) A description of public education and information programs on the management of municipal solid waste; and

(h) A determination of the adequacy of programs for the management of yard wastes, tires, lead acid batteries, household hazardous wastes and white goods.

(3) The department shall update the plan as needed.

SOURCES: Laws, 1991, ch. 494, § 12; Laws, 1998, ch. 498, § 1, eff from and after July 1, 1998.

Cross References — Local nonhazardous solid waste management plans, see §§ 17-17-223 et seq.

Regional solid waste management plans and authorities, see § 17-17-227.

Administrative Procedures Law, see §§ 25-43-1 et seq.

Duties of Department of Environmental Quality generally, see § 49-2-7.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-223. Development of planning guidance and forms for local nonhazardous solid waste management plans.

Not later than sixty (60) days after publication of the Final Subtitle D regulations in the Federal Register, but in no case later than January 1, 1992, the department shall develop planning guidance and forms for local nonhazardous solid waste management plans. The department shall make such guidance and forms available to local governments at no cost.

SOURCES: Laws, 1991, ch. 494, § 13, eff from and after passage (approved April 1, 1991).

Cross References — Duties of Department of Environmental Quality generally, see § 49-2-7.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-225. Establishment of criteria for evaluation of local nonhazardous solid waste management plans.

Before July 1, 1992, the commission shall establish criteria for the evaluation of local nonhazardous solid waste management plans. These criteria shall include, but not be limited to, the following:

(a) The unit of local government's demonstration of the understanding of its nonhazardous solid waste management system, including the sources, composition and quantities of nonhazardous solid waste generated within the planning area and transported into the planning area for management, and the existing and planned nonhazardous solid waste management capacity, including remaining available capacity;

(b) The adequacy of the local strategy for achieving the twenty-five percent (25%) waste minimization goal;

(c) The reasonableness of the twenty-year projections of nonhazardous solid waste generated within the planning area; and

(d) The adequacy of plans and implementation schedules for providing needed nonhazardous solid waste management capacity for the twenty-year period.

SOURCES: Laws, 1991, ch. 494 § 14; Laws, 1992, ch. 583 § 5, eff from and after passage (approved May 15, 1992).

Cross References — Duties of Commission of Environmental Quality generally, see § 49-2-9.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-227. County adoption of local nonhazardous solid waste management plan; contents; municipality participation; interlocal agreements; notice, ratification, review and implementation; alternative procedure for modifications; department to maintain copies; noncompliance with publication requirements.

(1) Each county, in cooperation with municipalities within the county, shall prepare, adopt and submit to the commission for review and approval a local nonhazardous solid waste management plan for the county. Each local nonhazardous solid waste management plan shall include, at a minimum, the following:

(a) An inventory of the sources, composition and quantities by weight or volume of municipal solid waste annually generated within the county, and the source, composition and quantity by weight or volume of municipal solid waste currently transported into the county for management;

(b) An inventory of all existing facilities where municipal solid waste is currently being managed, including the environmental suitability and operational history of each facility, and the remaining available permitted capacity for each facility;

(c) An inventory of existing solid waste collection systems and transfer stations within the county. The inventory shall identify the entities engaging in municipal solid waste collection within the county;

(d) A strategy for achieving a twenty-five percent (25%) waste reduction goal through source reduction, recycling or other waste reduction technologies;

(e) A projection, using acceptable averaging methods, of municipal solid waste generated within the boundaries of the county over the next twenty (20) years;

(f) An identification of the additional municipal solid waste management facilities, including an evaluation of alternative management technologies, and the amount of additional capacity needed to manage the quantities projected in paragraph (e);

(g) An estimation of development, construction, operational, closure and post-closure costs, including a proposed method for financing those costs;

(h) A plan for meeting any projected capacity shortfall, including a schedule and methodology for attaining the required capacity;

(i) A determination of need by the county, municipality, authority or district that is submitting the plan, for any new or expanded facilities. A determination of need shall include, at a minimum, the following:

(i) Verification that the proposed facility meets needs identified in the approved local nonhazardous solid waste management plan which shall take into account the quantities of municipal solid waste generated and the design capacities of existing facilities;

(ii) Certification that the proposed facility complies with local land use and zoning requirements, if any;

(iii) Demonstration, to the extent possible, that operation of the proposed facility will not negatively impact the waste reduction strategy of the county, municipality, authority or district that is submitting the plan;

(iv) Certification that the proposed service area of the proposed facility is consistent with the local nonhazardous solid waste management plan; and

(v) A description of the extent to which the proposed facility is needed to replace other facilities; and

(j) Any other information the commission may require.

(2) Each local nonhazardous solid waste management plan may include:

(a) The preferred site or alternative sites for the construction of any additional municipal solid waste management facilities needed to properly manage the quantities of municipal solid waste projected for the service areas covered by the plan, including the factors which provided the basis for identifying the preferred or alternative sites; and

(b) The method of implementation of the plan with regard to the person who will apply for and acquire the permit for any planned additional facilities and the person who will own or operate any of the facilities.

(3) Each municipality shall cooperate with the county in planning for the management of municipal solid waste generated within its boundaries or the

area served by that municipality. The governing authority of any municipality which does not desire to be included in the local nonhazardous solid waste management plan shall adopt a resolution stating its intent not to be included in the county plan. The resolution shall be provided to the board of supervisors and the commission. Any municipality resolving not to be included in a county waste plan shall prepare a local nonhazardous solid waste management plan in accordance with this section.

(4) The board of supervisors of any county may enter into interlocal agreements with one or more counties as provided by law to form a regional solid waste management authority or other district to provide for the management of municipal solid waste for all participating counties. For purposes of Section 17-17-221 through Section 17-17-227, a local nonhazardous solid waste management plan prepared, adopted, submitted and implemented by the regional solid waste management authority or other district is sufficient to satisfy the planning requirements for the counties and municipalities within the boundaries of the authority or district.

(5)(a) Upon completion of its local nonhazardous solid waste management plan, the board of supervisors of the county shall publish in at least one (1) newspaper as defined in Section 13-3-31, having general circulation within the county a public notice that describes the plan, specifies the location where it is available for review, and establishes a period of thirty (30) days for comments concerning the plan and a mechanism for submitting those comments. The board of supervisors shall also notify the board of supervisors of adjacent counties of the plan and shall make it available for review by the board of supervisors of each adjacent county. During the comment period, the board of supervisors of the county shall conduct at least one (1) public hearing concerning the plan. The board of supervisors of the county shall publish twice in at least one (1) newspaper as defined in Section 13-3-31, having general circulation within the county, a notice conspicuously displayed containing the time and place of the hearing and the location where the plan is available for review.

(b) After the public hearing, the board of supervisors of the county may modify the plan based upon the public's comments. Within ninety (90) days after the public hearing, each board of supervisors shall approve a local nonhazardous solid waste management plan by resolution.

(c) A regional solid waste management authority or other district shall declare the plan to be approved as the authority's or district's solid waste management plan upon written notification, including a copy of the resolution, that the board of supervisors of each county forming the authority or district has approved the plan.

(6) Upon ratification of the plan, the governing body of the county, authority or district shall submit it to the commission for review and approval in accordance with Section 17-17-225. The commission shall, by order, approve or disapprove the plan within one hundred eighty (180) days after its submission. The commission shall include with an order disapproving a plan a statement outlining the deficiencies in the plan and directing the governing

body of the county, authority or district to submit, within one hundred twenty (120) days after issuance of the order, a revised plan that remedies those deficiencies. If the governing body of the county, authority or district, by resolution, requests an extension of the time for submission of a revised plan, the commission may, for good cause shown, grant one (1) extension for a period of not more than sixty (60) additional days.

(7) After approval of the plan or revised plan by the commission, the governing body of the county, authority or district shall implement the plan in compliance with the implementation schedule contained in the approved plan.

(8) The governing body of the county, authority or district shall annually review implementation of the approved plan. The commission may require the governing body of each local government or authority to revise the local nonhazardous solid waste management plan as necessary, but not more than once every five (5) years.

(9) If the commission finds that the governing body of a county, authority or district has failed to submit a local nonhazardous solid waste management plan, obtain approval of its local nonhazardous solid waste management plan or materially fails to implement its local nonhazardous solid waste management plan, the commission shall issue an order in accordance with Section 17-17-29, to the governing body of the county, authority or district.

(10) The commission may, by regulation, adopt an alternative procedure to the procedure described in this section for the preparation, adoption, submission, review and approval of minor modifications of an approved local nonhazardous solid waste management plan. For purposes of this section, minor modifications may include administrative changes or the addition of any noncommercial nonhazardous solid waste management facility.

(11) The executive director of the department shall maintain a copy of all local nonhazardous solid waste management plans that the commission has approved and any orders issued by the commission.

(12) If a public notice required in subsection (5) was published in a newspaper as defined in Section 13-3-31, having general circulation within the county but was not published in a daily newspaper of general circulation as required by subsection (5) before April 20, 1993, the commission shall not disapprove the plan for failure to publish the notice in a daily newspaper. Any plan disapproved for that reason by the commission shall be deemed approved after remedying any other deficiencies in the plan.

SOURCES: Laws, 1991, ch. 494, § 15; Laws, 1993, ch. 600, § 1; Laws, 1998, ch. 498, § 2; Laws, 2006, ch. 587, § 1, eff from and after July 1, 2006.

Cross References — Authority of county to grant tax exemption for property surrounding certain public landfills, see § 19-5-19.

Powers and duties of Commission on Environmental Quality generally, see § 49-2-9.

Powers and duties of executive director of Department of Environmental Quality generally, see § 49-2-13.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

JUDICIAL DECISIONS

1. Application.

Proposed amendment of twenty-year waste-disposal plan was appropriate because the existence of Hancock County Solid Waste Authority's 2006 proposed amendment, which was never officially acted upon by the Mississippi Department of Environmental Quality as required by Miss. Code Ann. § 17-17-227(6), did not necessitate a finding that the Authority's 2007 proposal was invalid. Haas Trucking, Inc. v. Hancock County Solid Waste Auth., 29 So. 3d 853 (Miss. Ct. App. 2010).

ATTORNEY GENERAL OPINIONS

County may lease county-owned land to corporation for operation as commercial landfill. Mills, August 27, 1992, A.G. Op. #92-0414.

Municipality may opt out of county plan for disposal of household waste by resolution; in that case, county would not have authority to direct flow of household garbage out of municipality. Lamar, September 2, 1992, A.G. Op. #92-0477.

1993 amendment to statute authorizes governing bodies to assess and collect fees from each single family residential generator of nonhazardous solid waste and each industrial, commercial and multi-family residential generator of nonhazardous solid waste for all periods of time such generator has not otherwise contracted for collection and disposal at a permitted or authorized facility, but these amendments do not alter Section 17-17-13 exemption. Harris, July 6, 1993, A.G. Op. #93-0128.

Under Section 17-17-227, a county does not have to establish a regional solid waste authority to develop and implement its solid waste management plan. However, pursuant to Section 17-17-345, a county may contract with a regional solid waste authority to manage its solid waste for a term not to exceed thirty (30) years. Ainsworth, May 10, 1995, A.G. Op. #95-0118.

Under Section 17-17-227 the board may adopt an order or resolution nunc pro tunc placing the omitted, approved landfill site in the SWP without the necessity of a third public hearing. Ainsworth, August 17, 1995, A.G. Op. #95-0427.

As long as the District complies with the procedure and public hearing requirements of Section 17-17-227 in amending the twenty-year plan, the approval of the board of directors of the District is the only approval required for amendment to the twenty-year plan. Therefore, further approval of the member agencies of the District is not necessary for the modification of the twenty-year solid waste plan. Blackwell, December 8, 1995, A.G. Op. #95-0715.

No authority can be found for a municipality to withdraw from a local nonhazardous solid waste management plan unless, following the procedures in this section, the municipality prepares its own local nonhazardous solid waste management plan. Henderson, Dec. 14, 2004, A.G. Op. 04-0573.

A utility authority created pursuant to local and private legislation may not submit a plan to satisfy the member municipalities' statutory obligations under this section. Henderson, Dec. 14, 2004, A.G. Op. 04-0573.

§ 17-17-229. Facility permits for nonhazardous solid waste management; application requirements and criteria.

(1) After approval of a local nonhazardous solid waste management plan by the commission, neither the department, the permit board nor any other agency of the State of Mississippi shall issue any permit, grant or loan for any nonhazardous solid waste management facility in a county, municipality

region, or district which is not consistent with the approved local nonhazardous solid waste management plan.

(2) The commission shall adopt criteria to be considered in location and permitting of nonhazardous solid waste management facilities. The criteria shall be developed through public participation, shall be enforced by the permit board and shall include, in addition to all applicable state and federal rules and regulations, consideration of:

(a) Hydrological and geological factors, such as floodplains, depth to water table, soil composition, and permeability, cavernous bedrock, seismic activity, and slope;

(b) Natural resources factors, such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;

(c) Land use factors, such as local land use, whether residential, industrial, commercial, recreational, agricultural, proximity to public water supplies, and proximity to incompatible structures such as schools, churches and airports;

(d) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation; and

(e) Aesthetic factors, such as the visibility, appearance and noise level of the facility.

SOURCES: Laws, 1991, ch. 494, § 16; Laws, 1998, ch. 498, § 3; Laws, 2006, ch. 587, § 2, eff from and after July 1, 2006.

Cross References — Regulation of municipal solid waste landfills, see § 17-17-231.
Powers and duties of Commission on Environmental Quality generally, see § 49-2-9.
Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

§ 17-17-231. Adoption of rules and regulations governing municipal sanitary landfills.

(1) The Commission on Environmental Quality may adopt rules and regulations governing municipal solid waste landfills that accept household wastes, but any rules and regulations for such landfills shall, except for the adoption of criteria and standards to be considered in the location of such facilities, be no more stringent or extensive in scope, coverage and effect than Subtitle D regulations promulgated by the United States Environmental Protection Agency.

(2) If Subtitle D regulations do not provide a standard, criteria or guidance addressing matters relating to landfills, the commission may promulgate rules and regulations to address these matters in accordance with the Mississippi Administrative Procedures Law when the commission determines that such rules and regulation are necessary to protect human health, welfare or the environment.

(3) Nothing in this section shall prohibit the commission by order or the Permit Board in the issuance or modification of a permit from placing additional requirements on a landfill on a case by case basis in order to

prevent, abate, control or correct groundwater contamination, public endangerment or as otherwise determined necessary to protect human health, welfare or the environment.

SOURCES: Laws, 1991, ch. 494, § 18; Laws, 1992, ch. 583 § 20; Laws, 1993, ch. 484, § 1, eff from and after passage (approved March 27, 1993).

Cross References — Regulation of local or regional nonhazardous solid waste management facilities, see § 17-17-229.

Powers and duties of Commission on Environmental Quality generally, see § 49-2-9.

Federal Aspects — State or regional solid waste plans, see 42 USCS §§ 6941 et seq.

Environmental Protection Agency guidelines for development and implementation of state solid waste management plans, see 40 CFR 256.01 et seq.

§ 17-17-233. Establishment, collection and disposition of fees, surcharges, etc., to produce resources for closure of landfills and post-closure monitoring and remediation.

From and after October 9, 1993, the owner of a sanitary landfill shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the sanitary landfill and post-closure monitoring and remediation. However, the disposal of solid waste by persons on their own property, as described in Section 17-17-13, Mississippi Code of 1972, is exempt from this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure and post-closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner. The owner shall file with the department an annual audit of the account. The audit shall be conducted by a certified public accountant and shall be filed no later than December 31 of each year. Failure to collect or report such revenue is a noncriminal violation, punishable by a fine of not more than Five Thousand Dollars ($5,000.00) for each offense. The owner may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and post-closure requirements. If such expenditures do not deplete the fund to the detriment of eventual closure and post-closure requirements, any monies remaining in the account after paying for proper and complete closure and all post-closure requirements, as determined by the commission, shall be returned to the owner.

(c) The revenue generated under this section and any accumulated interest thereon may be applied to the repayment of any loan or the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure and post-closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

SOURCES: Laws, 1991, ch. 494, § 19; Laws, 1992, ch. 583 § 6, eff from and after passage (approved May 15, 1992).

Cross References — Establishment of proof of financial responsibility in lieu of requirements of section, see § 17-17-235.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 17-17-233, a surcharge on existing fees is legally permissible; however, a determination of whether another revenue-producing mechanism is appropriate lies with the Department of Environmental Quality. Hatcher, June 6, 2003, A.G. Op. 03-0200.

RESEARCH REFERENCES

ALR. State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

§ 17-17-235. Proof of financial responsibility by owner or operator of sanitary landfill in lieu of requirements of § 17-17-233.

An owner or operator of a sanitary landfill may establish proof of financial responsibility with the commission in lieu of the requirements of Section 17-17-233. Such proof may include surety bonds, certificates of deposit, securities, letter of credit, or other methods, as approved by the commission, showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with any closure and post-closure requirements. The owner or operator shall estimate such costs to the satisfaction of the commission.

SOURCES: Laws, 1991, ch. 494, § 20, eff from and after passage (approved April 1, 1991).

Cross References — Powers and duties of Commission of Environmental Quality generally, see § 49-2-9.

ATTORNEY GENERAL OPINIONS

The question of whether an insurance policy would suffice as proof of financial responsibility lies with the the Department of Environmental Quality. Hatcher, June 6, 2003, A.G. Op. 03-0200.

Bidding would not be required to secure an insurance policy. Hatcher, June 6, 2003, A.G. Op. 03-0200.

A solid waste management authority need not secure additional guarantees of closure, post-closure, maintenance or corrective action as long as such guarantees are provided by the operator, as long as same is approved by the Department of Environmental Quality. Hatcher, June 6, 2003, A.G. Op. 03-0200.

MISSISSIPPI REGIONAL SOLID WASTE MANAGEMENT AUTHORITY ACT

SEC.

17-17-301. Short title.
17-17-303. Legislative findings.
17-17-305. Definitions.
17-17-307. Creation of authority.
17-17-309. Incorporation of authority.
17-17-311. Amendment of incorporation agreement; withdrawal of member from authority; effect of withdrawal.
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17-17-315. Administrative office; contracts for provision of staff support, administrative and operational services; preparation, development and review of solid waste management plan.
17-17-317. Powers of authority generally.
17-17-319. Promulgation of rules and regulations relating to construction, operation and maintenance of facility owned or operated by authority; requirement of flow of municipal solid waste to particular designated facilities; disposal of waste at previously established projects.
17-17-321. Contracts between public agencies and authority for provision of solid waste management services by authority; payments for services and contributions by public agencies.
17-17-323. Rates and fees charged by public agencies for services provided by authority.
17-17-325. Submission of local nonhazardous solid waste management plan by authority; designation of geographic area for collection, storage, processing and disposal of solid waste; approval of permit application for facility.
17-17-327. Bonds of authority.
17-17-329. Issuance by counties of general obligation bonds for solid waste management facilities.
17-17-331. Temporary borrowing by authority.
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17-17-335. Issuance by municipalities or counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities.
17-17-337. Validation of bonds.
17-17-339. Terms and conditions of bonds of authority generally.
17-17-341. Appointment of trustee or receiver for enforcement or protection of rights of bondholders.
17-17-343. Exemption from taxation.
17-17-345. Powers of counties, municipalities or other political subdivisions and agencies and instrumentalities thereof as to assistance and cooperation with authorities.
17-17-347. Determination by local governments of costs for solid waste management within governmental service areas; establishment of systems for informing users of costs for solid waste management services; use of enterprise funds.
17-17-348. Counties and municipalities to publish detailed report of revenues and costs incurred in operating garbage or rubbish collection or disposal systems.
17-17-349. Derivation of pecuniary benefit by elected or appointed officials.

§ 17-17-301. Short title.

Sections 17-17-301 through 17-17-349 shall be known and cited as the "Mississippi Regional Solid Waste Management Authority Act."

SOURCES: Laws, 1991, ch. 581, § 1, eff from and after passage (approved April 12, 1991).

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management systems, see §§ 17-17-1 et seq.

Participation by counties in regional solid waste disposal and recovery systems, see § 17-17-33.

County establishment and maintenance of rubbish and garbage disposal systems, see §§ 19-5-17, 19-5-19.

Ad valorem tax levy to finance county operated garbage and rubbish disposal system, see §§ 19-5-21, 19-5-23.

Authorization to issue securities for the purposes of Sections 17-17-301 through 17-17-349 under the Mississippi Development Bank Act, see § 31-25-27.

Department of Environmental Quality generally, see §§ 49-2-4 et seq.

Construction grants for solid waste disposal plants and approval thereof by Commission on Environmental Quality, see §§ 49-17-65, 49-17-67.

JUDICIAL DECISIONS

1. In general.
2. Validity of ordinances.

1. In general.

The creation of a solid waste authority pursuant to the act does not vest absolute power in such authority and prevent the county board of supervisors from exercising jurisdiction over matters relating to the disposal of waste. Mississippi Waste of Hancock County, Inc. v. Board of Supvrs., 818 So. 2d 326 (Miss. 2001).

2. Validity of ordinances.

Solid waste flow control ordinances enacted by defendants, a waste management authority created under Miss. Code Ann. §§ 17-17-301 through 17-17-349, and its members, directing all solid waste collected in the authority's boundaries to the authority's landfill and transfer stations, violated the dormant Commerce Clause; plaintiff solid waste disposal companies were granted declaratory relief on their action under 42 U.S.C.S. § 1983 that the ordinances were invalid. Nat'l Solid Waste Mgmt. Assoc. v. Pine Belt Solid Waste Mgmt. Auth., 261 F. Supp. 2d 644 (S.D. Miss. 2003), on appeal, dismissed for want of standing as to claim ordinances facially discriminate against interstate commerce or out-of-state interests and reversed as to claim ordinances otherwise excessively burden interstate commerce, 389 F.3d 491 (5th Cir. 2004), cert. denied, 546 U.S. 812 (2005).

RESEARCH REFERENCES

ALR. Applicability of zoning regulations to waste disposal facilities of state or local government entities. 59 A.L.R.3d 1244.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 206-214, 440-447, 541, 542, 553 et seq.

61C Am. Jur. 2d, Pollution Control §§ 1036-1040, 1052-1060, 1099, 1105, 1133.

CJS. 39A C.J.S., Health and Environment § 77.

64 C.J.S., Municipal Corporations §§ 1167, 1281 et seq., 2118-2120 et seq., 2517 et seq.

64A C.J.S. Municipal Corporations §§ 2118-2120.

§ 17-17-303. Legislative findings.

The Legislature hereby finds and declares: that the collection, disposal and utilization of municipal solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this state require efficient municipal solid waste collection and disposal service; that there is a need for planning, research, development and innovation in the design, management and operation of facilities for municipal solid waste management, to encourage continuing improvement and provide adequate incentives and processes for reducing operation and other costs in the management of municipal solid waste; to provide for the collection and disposal of municipal solid waste and to encourage planning of municipal solid waste collection and disposal service, it is necessary and desirable to authorize the creation of regional authorities by counties and municipalities to acquire, construct, operate and maintain municipal solid waste management facilities.

SOURCES: Laws, 1991, ch. 581, § 2, eff from and after passage (approved April 12, 1991).

§ 17-17-305. Definitions.

Whenever used in Sections 17-17-301 through 17-17-349, the following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

(a) "Authority" means a regional solid waste management authority created under Sections 17-17-301 through 17-17-349.

(b) "Board" means the board of commissioners of an authority.

(c) "Bonds" means either revenue bonds, general obligation bonds, bond anticipation notes, or other types of debt instruments issued by the authority unless the reference to bonds clearly indicates "revenue bonds," "general obligation bonds," "bond anticipation notes" or such other forms of debt instruments.

(d) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates and all machinery and equipment, including motor vehicles which are used for project functions; and including any cost associated with the closure, post-closure maintenance or corrective action, financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, geotechnical, architectural and legal services; costs of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in Sections 17-17-301 through 17-17-349. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the costs of the project and may be paid or reimbursed as such out of the proceeds of user fees, of revenue bonds or notes issued under Sections 17-17-301 through 17-17-349 for such project, or from other revenues obtained by the authority.

(e) "County" means any county of this state.

(f) "Department" means the Department of Environmental Quality.

(g) "Designated representative" means the person named by resolution of the governing body of a county or municipal corporation as the representative of such unit of local government for the purpose of acting on their behalf as an incorporator in concert with other similarly named persons in the creation and incorporation of a regional authority under Sections 17-17-301 through 17-17-349.

(h) "Facilities" means any plant, structure, building, improvement, land, or any other real or personal property used or useful in a project under Sections 17-17-301 through 17-17-349.

(i) "Governing body" means the elected or duly appointed officials constituting the governing body of a municipality or county.

(j) "Incorporation agreement" means that agreement between the designated representatives of various units of local government setting forth the formal creation of a regional authority under Sections 17-17-301 through 17-17-349.

(k) "Incorporator" means the "designated representative."

(*l*) "Member" means a unit of local government participating in an authority.

(m) "Municipal solid waste" means any nonhazardous solid waste resulting from the operation of residential, commercial, governmental, industrial or institutional establishments except oil field exploration and production wastes and sewage sludge.

(n) "Municipality" means any incorporated city or town in this state.

(o) "Person" means a person as defined in Section 17-17-3, Mississippi Code of 1972.

(p) "Post-closure" means a procedure approved by the Environmental Protection Agency, or the department to provide for long-term financial assurance, monitoring, and maintenance of solid waste disposal sites to protect human health and the environment.

(q) "Project" means:

(i) The collection, transportation, management and disposal of municipal solid waste, including closure and post-closure and any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing, utilization, or final disposal of resources contained in solid waste, including the conversion of municipal solid waste or resources contained therein into compost, oil, charcoal, gas, steam, or any other product or energy source and the collection, storage, treatment, utilization, processing, or final disposal of solid waste in connection with the foregoing; and

(ii) Any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing and the conversion of such resources into any compost or useful form of energy.

(r) "Public agency" means any incorporated city or town, county, political subdivision, governmental district or unit, public corporation, public institution of higher learning, community college district, planning and development district, or governmental agency created under the laws of the state.

(s) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy or otherwise separating and preparing solid waste for reuse.

(t) "Revenues" means all rentals, receipts, income and other charges derived or received or to be derived or received by the authority from any of the following: the operation by the authority of a facility or facilities, or part thereof; the sale, including installment sales or conditional sales, lease, sublease or use or other disposition of any facility or portion thereof; the sale, lease or other disposition of recovered resources; contracts, agreements or franchises with respect to a facility (or portion thereof), with respect to recovered resources, or with respect to a facility (or portion thereof) and recovered resources, including but not limited to charges with respect to the management of municipal solid waste received with respect to a facility, income received as a result of the sale or other disposition of recovered resources; any gift or grant received with respect thereto; proceeds of bonds to the extent of use thereof for payment of principal of, premium, if any, or interest on the bonds as authorized by the authority; proceeds from any insurance, condemnation or guaranty pertaining to a facility or property mortgaged to secure bonds or pertaining to the financing of a facility; income and profit from the investment of the proceeds of bonds or of any revenues and the proceeds of any special tax to which it may be entitled.

(u) "Solid waste" means solid waste as defined in Section 17-17-3, Mississippi Code of 1972.

(v) "Municipal solid waste management facility" means any land, building, plant, system, motor vehicles, equipment or other property, whether real, personal or mixed, or any combination of either thereof, used or useful or capable of future use in the collection, storage, treatment, utilization, recycling, processing, transporting or disposal of municipal solid waste, including transfer stations, incinerators, sanitary landfill facilities or other facilities necessary or desirable.

(w) "Solid waste landfill" means a disposal facility where any amount of solid waste, whether or not mixed with or including other waste allowed under Subtitle D of the Resource Conservation and Recovery Act of 1976, as amended, is disposed of by means of placing an approved cover thereon.

(x) "State" means the State of Mississippi.

(y) "Unit of local government" means any county or municipality of the state.

SOURCES: Laws, 1991, ch. 581, § 3, eff from and after passage (approved April 12, 1991).

Federal Aspects — The Resource Conservation and Recovery Act of 1976 is codified at 42 USCS §§ 6901 et seq., the Solid Waste Disposal Act.

§ 17-17-307. Creation of authority.

Any unit of local government or any combination thereof may form a regional solid waste management authority. Creation of an authority shall be initiated by ordinance or resolution duly adopted by the governing body of each unit of local government. The ordinance or resolution shall state the necessity for the authority, the primary function, and authorize a designated representative of the unit of local government to enter into an incorporation agreement with the other units of local government. The authority is created and established as a public body corporate and politic constituting a political subdivision of the state and shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and the authority shall be empowered in accordance with Sections 17-17-301 through 17-17-349 to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 1991, ch. 581, § 4, eff from and after passage (approved April 12, 1991).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 17-17-307, "Mississippi Regional Solid Waste Authority Act", allows "any unit of local government or any combination thereof" to form Regional Solid Waste Management Authority. Crawford, Jan. 8, 1993, A.G. Op. #92-0957.

§ 17-17-309. Incorporation of authority.

(1) Within forty (40) days following the adoption of the final authorizing resolution, the designated representatives shall proceed to incorporate an authority by filing for record in the office of the chancery clerk of the participating counties and the Secretary of State an incorporation agreement approved by each member. The agreement shall comply in form and substance

with the requirements of this section and shall be executed in the manner provided in Sections 17-17-301 through 17-17-349.

(2) The incorporation agreement of an authority shall state:

(a) The name of each participating unit of local government and the date on which the governing bodies thereof adopted an authorizing resolution;

(b) The name of the authority which must include the words "........ Solid Waste Management Authority," or "The Solid Waste Management Authority of ....," the blank spaces to be filled in with the name of one or more of the members or other geographically descriptive term. If the Secretary of State determines that the name is identical to the name of any other corporation organized under the laws of the state or so nearly similar as to lead to confusion and uncertainty, the incorporators may insert additional identifying words so as to eliminate any duplication or similarity;

(c) The period for the duration of the authority;

(d) The location of the principal office of the authority which shall be within the boundaries of the members;

(e) That the authority is organized pursuant to Sections 17-17-301 through 17-17-349;

(f) The board setting forth the number of commissioners, terms of office and the vote of each commissioner;

(g) If the exercise by the authority of any of its powers is to be in any way prohibited, limited or conditioned, a statement of the terms of such prohibition, limitation or condition;

(h) Any provisions relating to the vesting of title to its properties upon its dissolution which shall be vested in any member; and

(i) Any other related matters relating to the authority that the incorporators may choose to insert and that are not inconsistent with Sections 17-17-301 through 17-17-349 or with the laws of the state.

(3) The incorporation agreement shall be signed and acknowledged by the incorporators before an officer authorized by the laws of the state to take acknowledgements. When the incorporation agreement is filed for record, there shall be attached to it a certified copy of the authorizing resolution adopted by the governing body of each member.

(4) The incorporators shall publish a notice of incorporation once a week for two (2) successive weeks in a daily newspaper or newspapers having general circulation throughout the region to be served.

(5) Upon the filing for record of the agreement and the required documents, the authority shall come into existence and shall constitute a public corporation under the name set forth in the incorporation agreement. The Secretary of State shall thereupon issue a certificate of incorporation to the authority.

SOURCES: Laws, 1991, ch. 581, § 5, eff from and after passage (approved April 12, 1991).

Cross References — Amendment of incorporation agreement, see § 17-17-311.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 17-17-311. Amendment of incorporation agreement; withdrawal of member from authority; effect of withdrawal.

(1) The incorporation agreement of any authority may be amended in the manner provided in this section. The board of the authority shall first adopt a resolution proposing an amendment to the incorporation agreement. The amendment shall be set forth in full in the resolution and may include any matters which might have been included in the original incorporation agreement.

(2) After the adoption of the resolution by the board, the chairman of the board and the secretary of the authority shall file a certified copy of the resolution and a signed written application in the name of and on behalf of the authority, under its seal, with the governing body of each member, requesting the governing body to adopt a resolution approving the proposed amendment. As promptly as may be practicable after the filing of the application with the governing body, that governing body shall review the application and shall adopt a resolution either denying the application or authorizing the proposed amendment. Any such resolution shall be published in a newspaper or newspapers as provided in subsection (4) of Section 17-17-309. The governing body shall cause a copy of the application and all accompanying documents to be spread upon or otherwise made a part of the minutes of the meeting of the governing body at which final action upon the application is taken. The incorporation agreement may be amended only after the adoption of a resolution by two-thirds (⅔) of the governing bodies of the members. Publication of such amendment shall be made as provided in subsection (4) of Section 17-17-309.

(3) Within forty (40) days following the adoption of the last adopted resolution approving the proposed amendment, the chairman of the board and the secretary of the authority shall sign, and file for record in the office of the chancery clerk with which the incorporation agreement of the authority was originally filed and the Secretary of State, a certificate in the name of and in behalf of the authority, under its seal, reciting the adoption of the respective resolutions by the board and by the governing body of each member and setting forth the amendment. The chancery clerk for such county shall record the certificate in an appropriate book in his office. When such certificate has been so filed and recorded, the amendment shall become effective. No incorporation agreement of an authority shall be amended except in the manner provided in this section.

(4) Any member of a regional solid waste management authority may withdraw from the authority by submitting a resolution to the board requesting an amendment to the incorporation agreement pursuant to subsection (1)

of this section. Upon compliance with the requirements of subsections (1) through (3) of this section and the payment of its pro rata share of any indebtedness, costs, expenses or obligations of the authority outstanding at the time of withdrawal, the amendment may become effective upon adoption of the resolution by the board. The withdrawal of a member shall not operate to impair, invalidate, release or abrogate any contract, lien, bond, permit, indebtedness or obligation of the authority, except to relieve the withdrawing member from further financial obligation to the authority.

(5) After the issuance of a permit by the permit board for the construction and operation of a solid waste landfill, any withdrawal of the situs county from the authority shall not affect the ability of the authority to operate a solid waste landfill upon the site for which the permit has been issued.

SOURCES: Laws, 1991, ch. 581, § 6; Laws, 1994, ch. 308, § 1, eff from and after passage (approved March 1, 1994).

§ 17-17-313. Board of commissioners of authority; employees; budget.

(1) All powers of the authority shall be vested in the board of commissioners. Each member of the authority shall have at least one (1) commissioner on the board.

The incorporators shall by duly adopted resolution or bylaws designate the vote of each commissioner based upon pro rata population, municipal solid waste volume or such other criteria as they may determine. In the alternative, the incorporators by duly adopted resolution, may authorize appointments to the board by the members to reflect population, municipal solid waste volume or such other criteria as the incorporators may determine. In addition, the incorporators shall designate a term for each commissioner at the time of incorporation so as to establish staggered terms of office. No commissioner shall serve for a term to exceed four (4) years unless duly reappointed. Such resolutions for the composition of the board and the vote of its commissioners shall be filed with the incorporation agreement.

(a) Initially, the board shall be composed as follows:

(i) Within thirty (30) days of the effective date of the incorporation agreement, the board of supervisors of each participating county and the mayor of each municipality acting on behalf and with the consent of the governing body of each participating municipality shall appoint at least one (1) person to the board as determined by the resolution of the incorporators.

(ii) The governing body of each county or municipality shall appoint only individuals who are residents of its respective county or municipality or an employee thereof.

(iii) The number of commissioners of the board shall be increased by at least one (1) each time a county or municipality enters into membership and executes a contract for solid waste management. The board shall establish the vote or number of commissioners based upon the same terms as the original resolution of the incorporators. Within fifteen (15) days of entering into the contract, the governing body of the county or municipality, entering into such contract shall appoint at least one (1) person to the board. Any commissioner appointed under the provision shall serve for a term of four (4) years.

(iv) After the initial term, the commissioners shall serve a term of four (4) years, and for such period thereafter until a successor shall be duly appointed and qualified.

(v) Upon selection of a site for any municipal solid waste management facility owned and/or operated by the authority, the situs county shall have a minimum representation at least as great as any single member. Such representation shall include a minimum of one (1) commissioner from the supervisor district in which the facility is located. The supervisor of the district or his designee shall serve in this position.

(b) Each commissioner of the board shall be eligible for reappointment. All vacancies shall be filled by appointment in the same manner, provided that any person appointed to fill a vacancy shall serve only for the unexpired term. Any commissioner may be removed at any time prior to the expiration of the member's term of office for misfeasance, malfeasance or willful neglect of duty, as determined by the appointing political subdivision. Before assuming office, each commissioner shall take and subscribe to the constitutional oath of office before a chancery clerk, and a record of such oath shall be filed with the Secretary of State. The board of commissioners shall annually select a chairman and a vice-chairman.

(2) The board may appoint an executive committee to be composed of not less than five (5) persons. No member shall have more than one (1) representative on the executive committee. The chairman of the board shall serve as chairman of the executive committee. The executive committee is empowered to execute all powers vested in the full board between meetings of the board. A majority plus one (1) shall constitute a quorum for the transaction of business. All actions of the executive committee must be ratified by a majority of the board at a regular or called meeting of the board.

(3) The board may employ such personnel and appoint and prescribe the duties of such officers as the board deems necessary or advisable, including a general manager and a secretary of the authority. The general manager may also serve as secretary and shall be a person of good moral character and of proven ability as an administrator with a minimum of five (5) years' experience in the management and administration of a public works operation or comparable experience which may include, but is not limited to, supervision, public financing, regulatory codes and related functions as minimum qualifications to administer the programs and duties of the authority. The general manager shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the board. The general manager and any commissioner not bonded in another capacity shall give bond executed by a surety company or companies authorized to do business in this state in the penal sum of Fifty Thousand Dollars ($50,000.00)

payable to the authority conditioned upon the faithful performance of his duties and the proper accounting for all funds. The board may require any of its employees to be bonded. The cost of any bond required by this section or by the board shall be paid from funds of the authority. The secretary shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal, and the official seal. The secretary may make copies of all minutes and other records and documents of the authority and to certify under the seal of the authority that such copies are true and accurate copies, and all persons dealing with the authority may rely upon such certificates.

(4) Regular meetings of the board shall be held as set forth in its bylaws, rules or regulations. Additional meetings of the board shall be held at the call of the chairman or whenever any three (3) commissioners so request.

(5) Upon express, prior authorization of the authority, each commissioner may receive compensation in an amount not to exceed Forty Dollars ($40.00) per day for attending each day's meeting of the board and for each day spent in attending to the business of the authority and, in addition, may receive reimbursement for actual and necessary expenses incurred as provided by Section 25-3-41, Mississippi Code of 1972. Each commissioner shall not be entitled to any additional compensation other than that specifically provided for in this subsection.

(6) The board shall prepare a budget for the authority for each fiscal year at least ninety (90) days prior to the beginning of each fiscal year, which shall be from July 1 to June 30 of each year, and shall submit it to the governing body of each member.

SOURCES: Laws, 1991, ch. 581, § 7, eff from and after passage (approved April 12, 1991).

ATTORNEY GENERAL OPINIONS

Under Section 17-17-313(1)(a)(v), withdrawal by county from Regional Solid Waste Authority did not affect provision that supervisor was entitled to serve or appoint representative, since county was situs county. Harris, July 30, 1993, A.G. Op. #93-0524.

The Mississippi Constitution prohibits a person from serving simultaneously as a city council member within the legislative branch of government and as a commissioner of the Pine Belt Regional Solid Waste Management Authority within the executive branch of government. Bailey, July 18, 1997, A.G. Op. #97-0411.

The Northeast Mississippi Solid Waste Management Authority must provide coverage for the Authority and hence the Authority's Board of Commissioners pursuant to § 11-46-17. Hatcher, Jan. 23, 2004, A.G. Op. 03-0655.

Existing public liability coverage of the elected officials who are representatives of their particular bodies on the Board of Commissioners does not suffice for public official liability for the Northeast Mississippi Solid Waste Management Authority. The Authority must provide coverage under the Tort Claims Act for the Authority and for those officials as Commissioners. Hatcher, Jan. 23, 2004, A.G. Op. 03-0655.

The Northeast Mississippi Solid Waste Management Authority may not drop the required tort claims coverage for any of its commissioners. Hatcher, Jan. 23, 2004, A.G. Op. 03-0655.

Since a county board of supervisors exercises judiciary branch powers, and a regional solid waste management authority is in the executive branch, the separation of powers doctrine prohibits a supervisor in a non-situs county or district for the facility from serving on the waste management authority board. Akins, July 17, 2006, A.G. Op. 06-0335.

Regional solid waste authority commissioners who are also part-time or full-time county or municipal employees may serve in both positions provided compensation is not received from both sources for the same work hours. Pope, Dec. 8, 2006, A.G. Op. 06-0589.

§ 17-17-315. Administrative office; contracts for provision of staff support, administrative and operational services; preparation, development and review of solid waste management plan.

The board may contract with and designate a local planning and development district in its jurisdiction to serve as the administrative office of the authority and to provide such staff support as may be necessary for the operation and administration of the authority. In addition, the board may contract with any county or municipality to provide support services and any member may contract with or as part of their service contract with the authority to provide such staff support, administrative and operational services as it deems advisable and on such terms as may be mutually agreed.

At the request of the board, the planning and development district shall coordinate and assist in the preparation and development of any solid waste management plan required by state law. A review of such plan shall be provided the board each year and periodically updated as determined to be necessary or as may be required by law.

SOURCES: Laws, 1991, ch. 581, § 8, eff from and after passage (approved April 12, 1991).

§ 17-17-317. Powers of authority generally.

From and after the creation of an authority it shall be a public corporation participating under its corporate name and shall, in that name, be a body politic and corporate with all the rights and powers necessary or convenient to carry out the purposes of Sections 17-17-301 through 17-17-349, including, but not limited to the following:

(a) To sue and be sued in its own name;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office or offices at such place or places within the management area as it may determine;

(d) To acquire, construct, improve, or modify, to operate or cause to be operated and maintained, either as owner of all or of any part in common with others, a project or projects within the counties or municipalities in the district and, to pay all or part of the cost of any such project or projects from the proceeds of bonds of the authority or from any contribution or loans by persons, firms, public agencies or corporations or from any other contribution or user fees, all of which the authority is authorized to receive, accept, and use and to pay all cost of operation and maintenance as may be determined as necessary for preparation of any project;

(e) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper, by condemnation in accordance with all laws applicable to the condemnation of property for public use, or by gift, grant, lease, or otherwise, real property or easements therein, franchises and personal property necessary or convenient for its corporate purposes. These purposes shall include, but are not limited to, the constructing or acquiring of a project; the improving, extending, reconstructing, renovating, or remodeling of any existing project or part thereof; or the demolition to make room for such project or any part thereof and to insure the same against any and all risks as such insurance may, from time to time, be available. The authority may also use such property and rent or lease the same to or from others including public agencies or make contracts for the use thereof or sell, lease, exchange, transfer, assign, pledge, mortgage or grant a security interest for any such property, provided that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided. Title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(f) To make, enforce, amend and repeal bylaws and rules and regulations for the management of its business and affairs and for the use, maintenance and operation of any of its project facilities and any other of its properties;

(g) To fix, charge, collect, maintain, and revise rates, fees and other charges for any services rendered by it to any person or public agency;

(h) To make contracts and leases with any person or public agency and to execute all instruments necessary or convenient for construction, operation, and maintenance of projects and leases of projects; and including the closure, post-closure maintenance and any required corrective action involving a project provided that all private persons, firms, and corporations, this state, and all units of local government, departments, instrumentalities, or agencies of the state or of local government are authorized to enter into contracts, leases or agreements with the authority, upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the above, authority is specifically granted to municipalities and counties and to the authority to enter into contracts, lease agreements, or other undertaking relative to the furnishing of project activities and facilities or either of them by the authority to such municipalities and counties and by such municipalities and counties to the authority for a term not exceeding thirty (30) years;

(i) To borrow money and to issue bonds for any of its purposes, except bonds may not be issued for operating costs, to provide for and secure the payment thereof, and to provide for the rights of the holders thereof;

(j) To invest any monies of the authority, including proceeds from the sale of any bonds subject to any agreements with bondholders, on such terms and in such manner as the authority deems proper;

(k) To exercise any one or more of the powers, rights, and privileges conferred by Sections 17-17-301 through 17-17-349 either alone or jointly or in common with one or more other public or private parties. In any such exercise of such powers, rights, and privileges jointly or in common with others for the construction, operation, and maintenance of facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by Sections 17-17-301 through 17-17-349 and may enter into an agreement or agreements with respect to any such facility with the other party or parties participating therein. An agreement may contain such terms, conditions, and provisions, consistent with this section, as the parties thereto shall deem to be in their best interest, including, but not limited to, provisions for the construction, operation, and maintenance of such facility by any one or more party of the parties to such agreement. The party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and including provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposal related to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. The agent shall act for the benefit of the public. The authority shall not delegate its right of eminent domain or power of condemnation. Pursuant to any such agreement, the authority may delegate its powers and duties related to the construction, operation, and maintenance of such facility to the party acting as agent and all actions taken by such agent in accordance with the agreement may be binding upon the authority without further action or approval of the authority;

(*l*) To apply, contract for, accept, receive and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, authority, or instrumentality of any of the foregoing, upon such terms and conditions as the United States, the state, a unit of local government, or such agency, department, authority, or instrumentality shall impose; to administer trusts; and to sell, lease, transfer, convey, appropriate and pledge any and all of its property and assets;

(m) To do any and all things necessary or proper for the accomplishment of the objectives of this section and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of the state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting and other professional services; the power to purchase all kinds of insurance, including without limitations, insurance against tort liability and against risks of damage to property; and the power to act as self-insurer with respect to any loss or liability. The obligations of the authority other than revenue bonds shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(n) To borrow money and issue its bonds from time to time and to use the proceeds to pay all or part of the capital costs of any project, or for closure, corrective action or post-closure maintenance of such project or for refunding any such bonds of the authority; and otherwise to carry out the purposes of this section and to pay all other capital costs but not operating costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund to secure such bonds and notes and to provide for the rights of the holder thereof;

(o) To assume or continue any contractual or other business relationships entered into by the municipalities or counties who are members of the authority, including the rights to receive and acquire transferred rights under option to purchase agreements and permit application;

(p) To enter on any lands, waters, or premises for the purpose of making surveys, borings, soundings and examinations for the purposes of the authority;

(q) To do and perform any acts and things authorized by Sections 17-17-301 through 17-17-349 under, through or by means of its officers, agents and employees, or by contracts with any person;

(r) To enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority, or to carry out any power expressly granted in Sections 17-17-301 through 17-17-349 including, without limiting the generality of the foregoing, contracts with public agencies, and such public agencies are hereby also empowered to enter into such contracts with the authority, which may include provisions for exclusive dealing, fee payment requirements, territorial division, and other conduct or arrangements which may have an anticompetitive effect;

(s) To enter into contracts with any municipality or county which is a member of the authority for the closure or post-closure maintenance of a municipal solid waste management facility owned and operated by such county or municipality; and

(t) To exercise the power of eminent domain for the particular purpose of the acquisition of property designated by plan to sufficiently accommodate the location of facilities, and such requirements related directly thereto pursuant to Chapter 27, Title 11, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 581, § 9, eff from and after passage (approved April 12, 1991).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (t). The words "Chapter 11, Title 27" were changed to "Chapter 27, Title 11". The Joint Committee ratified the correction at its December 3, 1996 meeting.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 17-17-317(e), solid waste authorities have power to acquire by condemnation real property or easements therein. Crawford, Jan. 8, 1993, A.G. Op. #92-0957.

Selection and acquisition of landfill site to be operated by regional solid waste management authority rests with regional governing board of regional authority pursuant to Section 17-17-317, not the county boards of supervisors. Tutor, Feb. 25, 1994, A.G. Op. #94-0097.

The broad powers under Sections 17-17-317(e) and (r) would include the right to enter into an option contract for the purchase of real property. The value of an option contract would have to be determined by its length and necessity for it, as well as the value of the property included in the option. Rotenberry, April 12, 1995, A.G. Op. #95-0078.

As selection and acquisition of landfill sites to be operated by a regional solid waste management authority rests with the governing board of the regional authority pursuant to the statute and not with the county board of supervisors, any petition and/or election thereon would not be binding on the regional authority. Gex, April 9, 1999, A.G. Op. #99-0147.

§ 17-17-319. Promulgation of rules and regulations relating to construction, operation and maintenance of facility owned or operated by authority; requirement of flow of municipal solid waste to particular designated facilities; disposal of waste at previously established projects.

(1) The authority may adopt and promulgate all reasonable rules and regulations regarding the specifications and standards relating to the construction, operation and maintenance of any facility owned or operated by the authority to comply with all federal and state environmental laws and regulations.

(2) The authority may determine if the mandatory flow of municipal solid waste to its facility is necessary to ensure the viability of the facility. Prior to the adoption of any ordinance declaring the necessity of requiring mandatory flow of municipal solid waste, the authority shall demonstrate in writing that it has considered the utilization of any municipal solid waste management facility in existence on April 12, 1991, which meets the proposed or final state and federal regulations. The authority must show that its decision not to use the existing facility is based on the fact that such facility is environmentally unsound, costs for use of such facility is inconsistent with comparable facilities within the State of Mississippi, or the use of such facility is not consistent with the local nonhazardous solid waste management plan. If the authority adopts a resolution declaring the necessity of requiring mandatory flow of municipal

solid waste to the facilities by any person located or residing within the territorial boundaries of a member of the authority or a public agency or person which contracts for use or services of the facilities owned or operated by the authority, then each member shall comply by adopting a resolution or ordinance to require such mandatory flow.

(3) All such rules and regulations prescribed by the authority shall not conflict with or suspend any rules or regulations prescribed by general statute or the Department of Environmental Quality.

(4) Any county or municipality participating in a regional authority is authorized to require by ordinance that all municipal solid waste generated within the designated geographic area that is placed in the waste stream be collected, transported, stored and managed at a designated permitted municipal solid waste management facility or facilities serving such area. The ordinance shall not be construed to prohibit the source separation of materials for purposes of recycling from municipal solid waste prior to collection of such municipal solid waste for management, or prohibit collectors of municipal solid waste from recycling materials or limit access to such materials as an incident to collection of such municipal solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically provided for pursuant to an approved local nonhazardous solid waste management plan.

(5) Prior to April 12, 1991, any county or municipality which has issued bonds for a project as defined in Section 17-17-103, Mississippi Code of 1972, and is not a member of a regional authority may continue and is empowered to assign collection territories, to regulate the collection of municipal solid wastes and to require the disposal of municipal solid wastes at a project to provide the volume of municipal solid wastes necessary to pay the operating costs of a project, or the principal and interest on revenue bonds issued for such project, or both such operating costs and bonds. When such county or municipality becomes a member of a regional authority, the county or municipality may exercise only those mandatory flow powers consistent with the regional authority plan.

SOURCES: Laws, 1991, ch. 581, § 10, eff from and after passage (approved April 12, 1991).

§ 17-17-321. Contracts between public agencies and authority for provision of solid waste management services by authority; payments for services and contributions by public agencies.

(1) Any public agency may, pursuant to a duly adopted resolution, contract with the authority for the authority to acquire, construct or provide facilities and projects to be owned by the authority for furnishing municipal solid waste management services to the public agency or to users within the boundaries of the public agency. The public agency shall be obligated to make payments which shall be sufficient to enable the authority to meet its

expenses, interest and principal payments (whether at maturity or upon sinking funds redemption) for its bonds, reserves for debt service, payments into funds for operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security agreement relating to its bonds. Such contracts may also contain other terms and conditions as the authority and the public agency may determine, including provisions whereby the public agency is obligated to make payments under such contract whether or not use or services are rendered or whether or not the facilities are completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the use or services of such facilities. Such contracts may be for a term covering the life of the facilities or for any other term or for an indefinite period and may be made with or without consideration and may provide that the amounts payable by the public agency are in lieu of all or any part of the rates, fees and other charges which would otherwise be collected from the users of the facilities.

(2) Contracts may provide that the obligation of a public agency to make payments to the authority for facilities is several, or is joint and several, with the obligations of other public agencies or other persons contracting with the authority for the use of services of such management facilities. When the public agency's obligation is joint and several, and if any other public agency or other person defaults in his obligation, then the public agency may be required to increase its payments to the authority by a proportional amount, taking into consideration the remaining persons who are likewise contracting with the authority and who are not in default.

(3) The obligations of a public agency arising under the terms of any contract referred to in this section, whether or not payable solely from revenues or solely from a pledge of ad valorem taxes or any combination thereof, shall not be construed as being included within the indebtedness limitations of the public agency for purposes of any constitutional or statutory limitation or provision. To the extent provided in such contract and to the extent such obligations of the public agency are payable solely from the revenues and other monies derived by the public agency from the operation of its facilities which are the subject of such contract, such obligations may be treated as expenses of operating such facilities.

(4) Contracts may also provide for payments in the form of contributions to defray the cost of any purpose set forth in the contracts and as advances for any facilities subject to repayment by the authority. A public agency may make such contributions or advances from its general fund, general obligation bond proceeds, or surplus fund or from any monies legally available therefor.

(5) Subject to the terms of a contract referred to in this section, the authority is hereby authorized to do and perform any and all acts or things necessary, convenient or desirable to carry out the purposes of such contract, including the fixing, charging, collecting, maintaining and revising of rates, fees and other charges for the services rendered to any user of the facilities operated or maintained by the authority, whether or not such facilities are owned by the authority.

SOURCES: Laws, 1991, ch. 581, § 11, eff from and after passage (approved April 12, 1991).

Cross References — Authorization to issue securities for the purposes of Sections 17-17-301 through 17-17-349 under the Mississippi Development Bank Act, see § 31-25-27.

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Miss. Code Section 17-17-321 provides authority for cities and counties to contract for acquisition, construction, and operation of solid waste management facilities and provision of services related thereto; under such agreements, participating counties and cities are obligated, among other things, to make payments which shall be sufficient to enable authority to meet its expenses, interest and principal payments for its bonds, reserves for debt service, payments for operation and maintenance and renewal and replacements; also, under Miss. Code Section 17-17-321, contract may make these obligations mandatory, whether or not facilities are completed or operating. Harris, Apr. 4, 1993, A.G. Op. #93-0137.

Miss. Code Section 17-17-321(4) envisions and authorizes long-term agreements between local government users and regional solid waste authorities; therefore, mayor and city council may, in exercise of their discretionary authority, pledge funds acquired or other available funds to secure interim financing of Regional Solid Waste Management Authority. Harris, Apr. 4, 1993, A.G. Op. #93-0137.

The procedure for requesting proposals set out in Section 31-7-13(t) applies only to contracts with private waste disposal firms and does not apply to contracts between public agencies and solid waste management authorities, which are governed by Section 17-17-321. Harris, September 6, 1996, A.G. Op. #96-0607.

§ 17-17-323. Rates and fees charged by public agencies for services provided by authority.

Whenever a public agency enters into a contract as authorized by Sections 17-17-301 through 17-17-349, and the payments are to be made either wholly or partly from the revenues of the authority's facilities, the duty is hereby imposed on the public agency at the direction of the authority to fix, establish and maintain, and from time to time adjust, the rates or fees charged by the public agency for the service of such facilities to the end that the revenues from such facilities, together with any ad valorem taxes levied for such payments, will be sufficient at all times to pay: (a) the expense of operating and maintaining such facilities; (b) all of the public agency's obligations to the authority under such contract; and (c) all of the obligations under and in connection with any outstanding bonds issued to finance in whole or in part such facilities.

SOURCES: Laws, 1991, ch. 581, § 12, eff from and after passage (approved April 12, 1991).

§ 17-17-325. Submission of local nonhazardous solid waste management plan by authority; designation of geographic area for collection, storage, processing and disposal of solid waste; approval of permit application for facility.

The authority may at the direction of the governing bodies of the participating units of local government submit a local nonhazardous solid waste management plan as required by Sections 17-17-201 through 17-17-235, to the Commission on Environmental Quality providing the authority's assurance of capacity for the management of municipal solid waste within the geographical boundaries of the authority for the period of not less than twenty (20) years.

The authority may designate a geographic area to the permit board within which the collection, transportation, storage, processing and disposal of all municipal solid waste generated within such area shall be accomplished in accordance with a local nonhazardous solid waste management plan. Such designation shall be made only after the permit board has received a resolution adopted by the unit or units of local government having jurisdiction within such geographic area that such designation be made and after approval of the commission of a local nonhazardous solid waste management plan.

The permit board shall not approve any permit application unless the facility is consistent with the applicable local nonhazardous solid waste management plan.

SOURCES: Laws, 1991, ch. 581, § 13, eff from and after passage (approved April 12, 1991).

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A county's direction to a regional authority to submit a local plan and a county's resolution to the permit board, both as allowed and directed by this section, could be subject to a petition under § 19-3-55 (modifying opinion to Gex dated April 9, 1999). Cuevas & Compretta, May 27, 1999, A.G. Op. #99-0266.

§ 17-17-327. Bonds of authority.

(1) The authority is empowered and authorized, from time to time, to issue bonds in such principal amounts as shall be necessary to provide sufficient funds for achieving any of its corporate purposes, including, without limiting the generality of the foregoing, the financing of the acquisition, construction, improvement, or the closure, corrective action or post-closure maintenance of facilities, or any combination thereof, the payment of interest on bonds of the authority, establishment of reserves to secure such bonds, expenses incident to the issuance of such bonds including bond insurance and to the implementation of the authority's programs, and all other capital expenditures but not operating costs of the authority incident to or necessary or convenient to carry out its corporate purposes and powers.

(2) The authority may issue such types of bonds as it may determine, subject only to any agreement with the holders of particular bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenues derived from one or more facilities pursuant to the contracts entered into by public agencies, and other persons pursuant to Sections 17-17-301 through 17-17-349, or any combination of any of the foregoing, or which may be secured by a pledge or any grant, subsidy, or contribution from any public agency or other person, or a pledge of an income or revenues, funds or monies of the authority from any source whatsoever.

(3) Bonds shall be authorized by a resolution or resolutions of the authority. Such bonds shall bear such date or dates, mature at such time or times (either serially, term or a combination thereof), bear interest at such rate or rates, be in such denomination or denominations, be in such registered form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner and by such officers, be payable from such sources in such medium of payment at such place or places within or without the state, provided that one (1) such place shall be within the state, be subject to such terms of redemption prior to maturity, all as may be provided by resolution or resolutions of the authority.

(4) Any bonds of the authority may be sold at such price or prices, at public or private sale, in such manner and at such times as may be determined by the authority to be in the public interest, and the authority may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof.

(5) Any pledge of earnings, revenues or other monies made by the authority shall be valid and binding from the time the pledge is made and the earnings, revenues or other monies so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the commissioners of the authority nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) Whenever any bonds shall have been signed by the officers designated by resolution of the authority to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the manual or facsimile signatures of such officers upon such bonds and the coupons appertaining thereto, shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially executing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

(8) Whenever a regional authority issues bonds secured by the revenues received from the participating member units of local governments, any local

governmental unit which contracts for solid waste management services from the authority is hereby authorized and empowered to agree in writing with the authority that, as provided in this section, the State Tax Commission shall (a) withhold all or any part as agreed by the local governmental units of any monies which such local governmental unit is entitled to receive from time to time pursuant to any law and which is in the possession of the State Tax Commission, and (b) pay the same over to the regional authority to satisfy any delinquent payments on any services to such local governmental unit which the regional authority has determined to be necessary to ensure the timely payment of any bonds of the regional authority secured by revenue to be received from the unit of local government or as may be necessary to replenish any funds of a debt service reserve fund of the regional authority which might have been expended to pay debt service as a result of the delinquency of a unit of local government. If the regional authority shall file a copy of such written agreement, together with a statement of delinquency, with the State Tax Commission, then the State Tax Commission shall immediately make the withholdings provided in such agreement from the amounts due the local governmental unit and shall continue to pay the same over to the regional authority until all such delinquencies are satisfied.

SOURCES: Laws, 1991, ch. 581, § 14; Laws, 1992, ch. 583 § 7, eff from and after passage (approved May 15, 1992).

Editor's Note — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Temporary borrowing, see § 17-17-331.

Refunding bonds of authority, see § 17-17-333.

Terms and conditions of bonds of authority, see §§ 17-17-339, 17-17-341.

§ 17-17-329. Issuance by counties of general obligation bonds for solid waste management facilities.

(1) The board of supervisors of a county and the governing authorities of a municipality, acting jointly or severally, shall have the power and is hereby authorized, from time to time, to issue general obligation bonds of the county or municipality for the purpose of providing sufficient funds for capital expenditures, including the financing of the acquisition, construction, improvement or the closure, corrective action or postclosure maintenance of solid waste management facilities pursuant to the provisions of Sections 19-9-1 through 19-9-25, or 21-33-301 through 21-33-329. General obligation bonds issued pursuant to this section shall be included in the limitation of indebtedness as set forth in Sections 19-9-5 and 21-33-303.

(2)(a) In addition to compliance with the provisions of Sections 19-9-1 through 19-9-25, Sections 21-33-301 through 21-33-329, for the issuance of general obligations of the county or municipality, the county or municipality shall advertise its intention to issue general obligation bonds of the county or municipality and specify the proposed increased tax rate of the county or municipality in a newspaper of general circulation in the county or municipality. The advertisement shall be no less than one-fourth (¼) page in size and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth (¼) inch solid black border. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county or municipality is published less than five (5) days a week. It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter. The advertisement shall be run once each week for the two (2) weeks preceding the date specified in the resolution by the board of supervisors or the governing authorities of the municipality. The advertisement shall state that the county or municipality proposes to issue general obligation bonds of the county or municipality for a solid waste management facility, the proposed property tax revenue and the procedure that may be taken by qualified electors of the county for calling an election on the question of issuance of the general obligation bonds of the county or municipality.

(b) The form and content of the notice shall be as follows:

"NOTICE OF TAX INCREASE

(Name of the County or Municipality) has proposed to increase its property tax revenue (designate one or more classes of property provided for in Section 112, Mississippi Constitution of 1890) by (percentage of increase of each class) percent, and to increase its total budget by (percentage of increase) percent for the purpose of the issuance of general obligation bonds of the county or municipality for a solid waste management facility."

If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the county or municipality file a written protest against the issuance of such bonds on or before the date specified in the resolution of the board of supervisors or governing authorities of the municipality, then an election on the question of the issuance of the bonds shall be called pursuant to Sections 19-9-13 and 19-9-15, or 21-33-307 through 21-33-311. If no protest is filed, then the bonds may be issued without an election, at any time, within two (2) years after the date specified in the resolution of the board of supervisors or governing authorities of the municipality.

SOURCES: Laws, 1991, ch. 581, § 15; Laws, 1992, ch. 442, § 1, eff from and after July 1, 1992.

Cross References — Refunding bonds of authority, see § 17-17-333.

Validation of bonds, see § 17-17-337.

Authorization to issue securities for the purposes of Sections 17-17-301 through 17-17-349 under the Mississippi Development Bank Act, see § 31-25-27.

§ 17-17-331. Temporary borrowing by authority.

(1) Pending the issuance of revenue bonds by the authority, the authority is hereby authorized to make temporary borrowings not to exceed two (2) years in anticipation of the issue of bonds in order to provide funds in such amounts as may, from time to time, be deemed advisable prior to the issue of bonds. To provide for such temporary borrowings, the authority may enter into any purchase, loan or credit agreement, or agreements or other agreement or agreements with any banks or trust companies or other lending institutions, investment banking firms or persons in the United States having power to enter into the same. The agreements may contain such provisions not inconsistent with Sections 17-17-301 through 17-17-349 as may be authorized by the board.

(2) All temporary borrowings made under this section shall be evidenced by notes of the authority which shall be issued, from time to time, for such amounts, in such form and in such denominations and subject to terms and conditions of sale and issue, prepayment or redemption and maturity, rate or rates of interest and time of payment of interest as the board shall authorize and direct and in accordance with Sections 17-17-301 through 17-17-349. Such authorization and direction may provide for the subsequent issuance of replacement notes to refund, upon issuance thereof, such notes, and may specify such other terms and conditions with respect to the notes and replacement notes thereby authorized for issuance as the board may determine and direct.

SOURCES: Laws, 1991, ch. 581, § 16, eff from and after passage (approved April 12, 1991).

Cross References — Bonds generally, see § 17-17-327.
Refunding bonds, see § 17-17-333.

§ 17-17-333. Refunding bonds of authority.

The authority may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the authority deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereof, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the authority shall be governed by Sections 17-17-327 and 17-17-329 relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

SOURCES: Laws, 1991, ch. 581, § 17, eff from and after passage (approved April 12, 1991).

Cross References — Terms and conditions of bonds of authority, see §§ 17-17-339, 17-17-341.

Validation of bonds, see § 17-17-337.

§ 17-17-335. Issuance by municipalities or counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities.

The governing body of any municipality or county which owns and operates a municipal solid waste management facility which as a result of Subtitle D regulation of the Resource Conservation and Recovery Act of 1976, as amended, is required to incur cost for the closure, post-closure maintenance or any corrective action of any existing facility is authorized to issue general obligation bonds of the county or municipality pursuant to Sections 19-9-1 through 19-9-25 or Sections 21-33-301 through 21-33-323 or revenue bonds for such purposes. The revenue bonds may be payable from and serviced by any revenues derived from any fees, charges or rates for the operation of or providing for municipal solid waste collection and disposal services. The general obligation bonds shall be applied against any limitation on bonded indebtedness of the issuer.

SOURCES: Laws, 1991, ch. 581, § 18, eff from and after passage (approved April 12, 1991).

Cross References — Validation of bonds, see § 17-17-337.

Authorization to issue securities for the purposes of Sections 17-17-301 through 17-17-349 under the Mississippi Development Bank Act, see § 31-25-27.

Federal Aspects — The Resource Conservation and Recovery Act of 1976 is codified at 42 USCS §§ 6901 et seq.

§ 17-17-337. Validation of bonds.

All bonds issued pursuant to Sections 17-17-329, 17-17-333 and 17-17-335 may be validated as now provided by law in Sections 31-13-1 through 31-13-11, Mississippi Code of 1972. Such validation proceedings shall be instituted in the chancery court of the county in which the principal office of the authority is located, but notice of such validation proceedings shall be published at least two (2) times in a newspaper of general circulation in each of the counties, the first publication of which in each case shall be made at least ten (10) days preceding the date set for validation.

SOURCES: Laws, 1991, ch. 581, § 19, eff from and after passage (approved April 12, 1991).

§ 17-17-339. Terms and conditions of bonds of authority generally.

The authority shall have power in the issuance of its bonds to:

(a) Covenant as to the use of any or all of its property, real or personal.

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders.

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any facilities or any revenue-producing contract or contracts made by the authority with any person to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist.

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, monies, funds or property with respect to which the authority may have any rights or interest.

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(h) Covenant as to the limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.

(*l*) Covenant as to the vesting in a trustee or trustees, with in or outside the state, of such properties, rights, powers and duties in trust as the authority may determine.

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the Constitution of the state.

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the authority may reasonably require.

SOURCES: Laws, 1991, ch. 581, § 20, eff from and after passage (approved April 12, 1991).

§ 17-17-341. Appointment of trustee or receiver for enforcement or protection of rights of bondholders.

The authority may, in any authorizing resolution of the board of commissioners, trust indenture or other security instrument relating to its bonds, provide for the appointment of a trustee who shall have such powers as are provided therein to represent the bondholders of any issue of bonds in the enforcement or protection of their rights under any such resolution, trust indenture or security instrument. The authority may also provide in such resolution, trust indenture or other security instrument that the trustee, or if the trustee so appointed fails or declines to protect and enforce such bondholders' rights then the percentage of bondholders as shall be set forth in, and subject to the provisions of, such resolution, trust indenture or other security instrument, may petition the chancery court of proper jurisdiction for the appointment of a receiver of the facilities, the revenues of which are pledged to the payment of the principal of and interest on the bonds held by such bondholders. Such receiver may exercise any power as may be granted in any such resolution, trust indenture or security instrument to enter upon and take possession of, acquire, construct or reconstruct, or operate and maintain such facilities, fix, charge, collect, enforce and receive all revenues derived from such facilities and perform the public duties and carry out the contracts and obligations of the authority in the same manner as the authority itself might do, all under the direction of such chancery court.

SOURCES: Laws, 1991, ch. 581, § 21, eff from and after passage (approved April 12, 1991).

§ 17-17-343. Exemption from taxation.

(1) The exercise of the powers granted by Sections 17-17-301 through 17-17-349 will be in all respects for the benefit of the people of the state, for their well-being and prosperity and for the improvement of their social and economic conditions, and the authority shall not be required to pay any tax or

assessment on any property owned by the authority or upon the income therefrom.

(2) Any bonds issued by the authority under the provisions of Sections 17-17-301 through 17-17-349, their transfer and the income therefrom shall at all time be free from taxation by the state or any unit of local government or other instrumentality of the state, except for inheritance and gift taxes.

SOURCES: Laws, 1991, ch. 581, § 22, eff from and after passage (approved April 12, 1991).

§ 17-17-345. Powers of counties, municipalities or other political subdivisions and agencies and instrumentalities thereof as to assistance and cooperation with authorities.

(1) For the purpose of attaining the objectives of Sections 17-17-301 through 17-17-349, any county, municipality or other unit of local government, public corporation, agency or instrumentality of the state, a county or municipality may, upon such terms and with or without consideration, as it may determine, do any or all of the following:

(a) Lend, contribute, or donate money to any authority or perform services for the benefit thereof;

(b) Donate, sell, convey, transfer, lease or grant to any authority, without the necessity of authorization at any election of qualified voters, any property of any kind; and

(c) Do any and all things, whether or not specifically authorized in this section, not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with any authority in attaining the objectives of Sections 17-17-301 through 17-17-349.

(2) Any county, municipality or other political subdivision, public corporation, agency or instrumentality of the state, a county or municipality are each hereby specifically authorized to enter into a contract or contracts obligating any such entity to manage its solid waste, or any part thereof, at a facility or facilities owned or operated by such authority and obligating such county, municipality or other political subdivision, public corporation, agency or instrumentality of the state, a county or municipality to make payments to such authority for such management on such terms, provisions and conditions as deemed appropriate. Any such contract or contracts may provide for the continuous management of such solid waste from year to year, but for a term not to exceed thirty (30) years. Any costs to any such county, municipality or other political subdivision, public corporation, agency or instrumentality of the state, a county or municipality shall be paid annually out of funds of any such county, municipality or other political subdivision, public corporation, agency or instrumentality of the state or any county or municipality. The entering into of such contract or contracts shall not constitute the incurring of a debt by such county, municipality or other unit of local government, public corporation, agency or instrumentality of the state or any county or municipality within the meaning of any constitutional or statutory limitations on debts of the state, the counties or the municipalities.

SOURCES: Laws, 1991, ch. 581, § 23, eff from and after passage (approved April 12, 1991).

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Miss. Code Section 17-17-345 envisions and authorizes long term agreements between local government users and regional solid waste authorities; therefore, mayor and city council may, in exercise of their discretionary authority, pledge funds acquired or other available funds to secure interim financing of Regional Solid Waste Management Authority. Harris, Apr. 4, 1993, A.G. Op. #93-0137.

Under Section 17-17-227, a county does not have to establish a regional solid waste authority to develop and implement its solid waste management plan. However, pursuant to Section 17-17-345, a county may contract with a regional solid waste authority to manage its solid waste for a term not to exceed thirty (30) years. Ainsworth, May 10, 1995, A.G. Op. #95-0118.

Under Section 17-17-345 if a political subdivision solicits proposals for solid waste disposal service, that represents a policy decision by that political subdivision, not a legal obligation. Therefore, a political subdivision may, if it wishes, curtail this process and enter negotiations without any legal requirement to consider all proposals, nor is it required to accept the lowest proposal. Cole, September 5, 1995, A.G. Op. #95-0571.

§ 17-17-347. Determination by local governments of costs for solid waste management within governmental service areas; establishment of systems for informing users of costs for solid waste management services; use of enterprise funds.

(1) At the conclusion of each fiscal year, beginning with Fiscal Year 1992, each unit of local government shall determine during its regular audit the full and complete cost for solid waste management within the service area of the unit of local government for the previous fiscal year, and shall update the full and complete cost every year thereafter. The Department of Audit shall establish the method for units of local government to use in calculating full and complete cost for the preceding fiscal year to be included as a part of the regular audit of the operations of the unit of local government.

(2)(a) Each unit of local government shall establish a system to inform, no less than once a year, residential and nonresidential users of municipal solid waste management services within its service area of the user's share, on an average or individual basis, of the full cost for municipal solid waste management as determined pursuant to subsection (1) of this section.

(b) Counties and municipalities are encouraged to operate their municipal solid waste management systems through use of an enterprise fund.

(3) For purposes of this section, "service area" means the area in which the unit of local government provides, directly or by contract, municipal solid waste management services. This section shall not be construed to require a person operating under a franchise agreement to manage municipal solid waste within the service area of a unit of local government to make the calculations or to establish a system to provide information required under this section, unless such person agrees to do so as part of such franchise agreement.

SOURCES: Laws, 1991, ch. 581, § 24; Laws, 1992, ch. 583 § 8, eff from and after passage (approved May 15, 1992).

§ 17-17-348. Counties and municipalities to publish detailed report of revenues and costs incurred in operating garbage or rubbish collection or disposal systems.

(1) In addition to any notice requirements otherwise provided by law, the board of supervisors of each county and the governing authorities of each municipality, before the first day of the fiscal year, shall publish in a newspaper having a general circulation in the county, a detailed, itemized report of all revenues, costs and expenses incurred by the county or municipality during the immediately preceding county or municipal fiscal year in operating the garbage or rubbish collection or disposal system. The report shall disclose:

(a) The total dollar amount of revenues received or dedicated by the county or municipality during the immediately preceding fiscal year for operation of the garbage or rubbish collection or disposal system;

(b) The identity of each source of funding and the dollar amount received from each source of funding during the immediately preceding fiscal year for operation of the garbage or rubbish collection or disposal system, including ad valorem taxes, fees and other sources; and

(c) The total dollar amount expended by the county or municipality to operate the garbage or rubbish collection or disposal system, along with the names and addresses of all businesses and persons with whom the county or municipality has contracted to perform or provide garbage or rubbish collection or disposal, the dollar amount of expenditures made under each contract and an itemized list of all other expenditures of county or municipal funds to operate and administer the garbage or rubbish collection or disposal system.

(2) The notice required under subsection (1) of this section shall be no less than one-eighth (⅛) page in size and the type used shall be no smaller than ten (10) point and surrounded by a one-fourth-inch (¼) solid black border. The notice may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The notice must appear in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week. The newspaper selected must be one of general interest and readership in the community, and not one of limited subject matter. The notice must be published at least once.

SOURCES: Laws, 1996, ch. 536, § 4, eff from and after passage (approved April 12, 1996).

§ 17-17-349. Derivation of pecuniary benefit by elected or appointed officials.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, as a result of such elected or appointed official's duties under Sections 17-17-301 through 17-17-349.

SOURCES: Laws, 1991, ch. 581, § 31, eff from and after passage (approved April 12, 1991).

DISPOSAL OF WASTE TIRES AND LEAD ACID BATTERIES; RIGHT-WAY-TO-THROW-AWAY PROGRAM

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§ 17-17-401. Legislative findings.

The Legislature finds that:

(a) Uncontrolled disposal of waste tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards and present a difficult disposal problem for landfills.

(b) A significant number of waste tires are illegally dumped in Mississippi.

(c) It is in the state's best interest to encourage efforts to recycle or recover resources from waste tires.

(d) It is desirable to discourage the landfilling of whole waste tires.

SOURCES: Laws, 1991, ch. 531, § 1, eff from and after July 1, 1991.

Cross References — Crime of littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

§ 17-17-403. Definitions.

The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Commission" means the Commission on Environmental Quality.

(b) "Collection contractor" means a person approved by the department and used by a county, municipality or multicounty agency to operate a household hazardous waste collection and management program.

(c) "Department" means the Department of Environmental Quality.

(d) "Household hazardous waste" means any waste that would be considered hazardous under the Solid Wastes Disposal Law of 1974, Section 17-17-1 et seq., Mississippi Code of 1972, or any rules and regulations promulgated thereto, but for the fact that it is produced in quantities smaller than those regulated under that law or regulations and is generated by persons not otherwise covered by that law or regulations.

(e) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, farm equipment or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but does not include traction engines, road rollers, earth movers, graders, loaders and other similar construction equipment requiring oversized tires, any vehicles which run only upon a track, bicycles or mopeds. For purposes of this article, "farm equipment" means any vehicle which uses tires having the following designations: I-1, I-2, I-3, R-1, R-2, R-3, F-1, F-2 and Farm Highway Service.

(f) "Small business" means any commercial establishment not regulated under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C.S. 6901 et seq.), as amended or regulations promulgated thereto.

(g) "Small quantity waste tire generator" means any private individual generating twenty-five (25) or fewer waste tires annually, or a tire retail outlet, automotive mechanic shop or other commercial or governmental entity that generates ten (10) or fewer waste tires per week.

(h) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

(i) "Waste tire" means a whole tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(j) "Waste tire hauler" means any person engaged in the collection and/or transportation of fifty (50) or more waste tires for the purpose of storage, processing or disposal or any person transporting waste tires for compensation.

(k) "Waste tire processing facility" means a site where tires are reduced in volume by shredding, cutting, chipping or otherwise altered to facilitate recycling, resource recovery or disposal. The term includes mobile waste tire processing equipment. Commercial enterprises processing waste tires shall not be considered solid waste management facilities.

(*l*) "Waste tire collection site" means a site used for the storage of one hundred (100) or more waste tires.

SOURCES: Laws, 1991, ch. 531, § 2; Laws, 1993, ch. 500, § 1; Laws, 1997, ch. 544, § 1; Laws, 1998, ch. 349, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 1993, ch. 500, § 9, provided for the repeal of this section effective after June 30, 1995. Subsequently, Laws of 1995, ch. 615, § 3, effective from and after July 1, 1995, amended Laws of 1993, ch. 500, § 9, so as to delete the repeal provision.

Cross References — Disposal of waste tires, see §§ 17-17-405 through 17-17-427.

Disposal of lead acid batteries, see §§ 17-17-429 through 17-17-437.

Establishment, operation and administration of programs for household hazardous waste collection and management, see §§ 17-17-439 through 17-17-445.

§ 17-17-405. Provision to department of information regarding waste tire collection sites; maintenance of unauthorized waste tire collection or disposal sites; disposal of waste tires at unauthorized sites; closure of sites upon cessation of operations.

(1) Owners and operators of any waste tire collection site shall provide the department with information concerning the site's location, size and approximate number of waste tires that have been accumulated at the site. The department shall promptly provide that information to the chancery clerk of the county in which the site is located.

(2) It is unlawful for any person to maintain a waste tire collection site or a waste tire disposal site unless the site is authorized by the department or permitted by the permit board. It is unlawful for any person to dispose of waste tires in the state unless the waste tires are disposed at an authorized waste tire collection site, a waste tire collection center, waste tire processing site or a waste tire disposal site.

(3) Each operator of a waste tire collection site in operation or accepting waste tires after January 1, 1991, shall ensure that the area is properly closed upon cessation of operations. The department may require that a closure plan be submitted with the application for authorization. The closure plan, as approved by the department, shall include at least the following:

(a) A description of how and when the area will be closed; and

(b) The method of final disposition of any waste tires remaining on the site at the time notice of closure is given to the department.

(4) The operator shall notify the department at least ninety (90) days before the date the operator expects closure to begin. No waste tires may be received by the waste tire collection site after the date closure is to begin.

(5) If the operator of a waste tire collection site fails to properly implement the closure plan, the commission shall order the operator to implement that plan, and take other steps under Section 17-17-29 to assure the proper closure of the site.

SOURCES: Laws, 1991, ch. 531, § 3; Laws, 1997, ch. 544, § 2, eff from and after July 1, 1997.

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tires fees, see § 17-17-425.

§ 17-17-407. Promulgation and enforcement of rules and regulations.

The commission may promulgate and enforce rules and regulations pertaining to collection, transportation, storage, processing and disposal of waste tires and may modify, repeal, make exceptions to and grant exemptions and variances from the rules and regulations. The rules and regulations shall include:

(a) Methods of collection, storage, processing and disposal of waste tires. The following are permissible methods of waste tire processing and disposal:

(i) Controlling soil erosion, when whole tires are not used;

(ii) Grinding into crumbs for use in road asphalt, tire derived fuel and as raw materials for other products;

(iii) Pyrolizing or other physico-chemical processing;

(iv) Incineration;

(v) Landfilling split, ground, chopped, sliced or shredded waste tires until July 1, 2000. Beginning July 1, 2000, the landfilling of waste tires in any form, including, but not limited to, split, ground, chopped, sliced, shredded or whole waste tires is prohibited, unless the commission grants an exception. In determining whether to grant an exception, the commission shall consider the following factors: A. Whether sufficient end-use or recycling markets have developed in all or parts of the state, B. whether the condition of the waste tire or waste tire derived material prevents recycling, C. whether the prohibition on landfilling waste tires will place a financial burden on local governments, or D. other factors the commission deems relevant. It is the intent of the Legislature that the commission shall, to the extent practicable, grant exceptions in areas of the state where the prohibition against landfilling waste tires will pose a demonstrated, unfunded financial burden on local governments.

(vi) Other methods as approved by the commission.

(b) Procedures for authorization or permitting for waste tire collection sites, waste tire processing facilities, waste tire haulers and waste tire disposal sites, including a review of the applicant's performance history;

(c) Requirements for location of facilities at which waste tires are collected, stored, processed or disposed, with regards to property boundaries and buildings, pest control, accessibility by fire fighting equipment and other considerations as they relate to protection of public health and safety and the environment; and

(d) Requirements for any financial assurance for waste tire haulers, waste tire collection sites, waste tire processing facilities and waste tire disposal facilities.

SOURCES: Laws, 1991, ch. 531, § 4; Laws, 1993, ch. 500, § 2; reenacted and amended, 1995, ch. 615, § 1; Laws, 1997, ch. 544, § 3; Laws, 1999, ch. 402, § 1, eff from and after passage (approved Mar. 16, 1999.)

Editor's Note — Laws of 1993, ch. 500, § 9, provided for the repeal of this section effective after June 30, 1995. Subsequently, Laws of 1995, ch. 615, § 3, effective from and after July 1, 1995, amended Laws of 1993, ch. 500, § 9, so as to delete the repeal provision.

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

§ 17-17-409. Powers and duties of counties, regional solid waste management authorities or municipalities regarding waste tire collection, processing and disposal.

Each county, regional solid waste management authority or municipality, as the case may be, shall, as part of its local nonhazardous solid waste management plan as required by law, plan and provide an adequate number of waste tire collection sites within its jurisdiction, for the deposit of waste tires from small quantity waste tire generators and shall ensure the delivery of these tires on an adequate frequency to an authorized waste tire processing/disposal facility operated by the county, regional solid waste authority or private entity. Counties may establish, own and/or operate a waste tire collection site or sites or may enter into leases or other contractual arrangements with other counties or private entities for the operation of waste tire collection sites for small quantity generators. Nothing in this section shall prevent a county or regional solid waste authority from providing a more expansive waste tire management service.

SOURCES: Laws, 1991, ch. 531, § 5; Laws, 1993, ch. 500, § 3, eff from and after passage (approved March 30, 1993).

Editor's Note — Laws of 1993, ch. 500, § 9, provided for the repeal of this section effective after June 30, 1995. Subsequently, Laws of 1995, ch. 615, § 3, effective from and after July 1, 1995, amended Laws of 1993, ch. 500, § 9, so as to delete the repeal provision.

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

§ 17-17-411. Registration of waste tire haulers; issuance and use of hauler identification numbers.

(1) Any waste tire hauler transporting waste tires within or into the state must register with the department. Following submission of a completed application, the department shall issue to the waste tire hauler a waste tire hauling identification number.

(2) Each waste tire hauler shall furnish its waste tire hauler identification number on all certification forms required under Sections 17-17-401 through 17-17-427 or regulations promulgated under those sections.

SOURCES: Laws, 1991, ch. 531, § 6; Laws, 1997, ch. 544, § 4, eff from and after July 1, 1997.

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

§ 17-17-413. Execution and disposition of certification form relating to waste tires collected and shipped for storage, processing or disposal.

(1) Every tire retailer or other person providing waste tires for transportation to a facility for storage, processing or disposal shall complete and sign a certification form, as prescribed by the department certifying the number of waste tires shipped for processing or disposal, the county and state in which the tires were collected and the name and address of the waste tire processing, storage and/or disposal facility for which the waste tires are destined. The form shall be completed and signed by the waste tire hauler, certifying receipt of such waste tires from the tire retailer or other person providing waste tires for transportation to a facility for storage, processing or disposal. The waste tire hauler shall present the certification form to the owner or operator of a waste tire collection facility, waste tire processing facility or a waste tire disposal facility at the time of delivery of waste tires for collection, processing or disposal. The tire retailer or other person providing the waste tires for

transportation shall retain a copy of the certification signed by such person and the waste tire hauler. The waste tire hauler and the owner or operator of the facility receiving the waste tires shall each retain a copy of the certification containing all signatures. Copies of these certification forms shall be retained for a minimum of three (3) years after the date of delivery of the waste tires.

(2) The provisions of this section shall not apply to tires that are provided for disposal in quantities of five (5) or less by a person other than a waste tire collector, waste tire processor or waste tire hauler.

SOURCES: Laws, 1991, ch. 531, § 7, eff from and after July 1, 1991.

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

§ 17-17-415. Tire retailers required to accept used or waste tires from customer at time of purchase; fee for accepting used or waste tire for disposal; limits and restrictions on holding of waste tires by retailers or wholesalers, motor vehicle dismantlers and salvage dealers.

(1) Any person selling new or reusable tires at retail shall accept from a customer at the point of transfer, used or waste tires in a quantity at least equal to the number of new or reusable tires purchased, if offered by the customer. The retailer may assess a disposal fee on each tire sold. If the retailer imposes a disposal fee, the retailer is prohibited from imposing a disposal fee on the customer in excess of the actual per tire disposal costs incurred by the retailer and is also prohibited from waiving the disposal fee if the customer keeps the used or waste tire. In addition, if a retailer is required to remit the waste tire fee in Section 17-17-423 directly to the State Tax Commission, the fee shall be considered a part of his actual disposal costs.

(2) Any tire retailer, tire wholesaler, motor vehicle dismantler and salvage dealer may hold not more than five hundred (500) waste tires for a period not to exceed ninety (90) days without being authorized as a waste tire collection site, if such tires are stored in a manner which protects human health and the environment pursuant to regulations adopted by the commission.

SOURCES: Laws, 1991, ch. 531, § 8; Laws, 1993, ch. 500, § 4; Laws, 2004, ch. 536, § 2, eff from and after July 1, 2004.

Editor's Note — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 17-17-417. Use of waste tires for soil erosion abatement, drainage and agricultural purposes.

A person who leases or owns real property may use waste tires for soil erosion abatement and drainage purposes in accordance with procedures approved by the commission, or to secure covers over silage, hay, straw or agricultural products.

SOURCES: Laws, 1991, ch. 531, § 9, eff from and after July 1, 1991.

§ 17-17-419. Abatement of unauthorized waste tire dump or stockpile.

(1) If the commission is notified of and upon investigation confirms the presence of an unauthorized waste tire dump or stockpile it shall notify the person responsible for the unauthorized waste tire dump and request that the waste tires be processed or removed. If the person fails to take the requested action, the commission shall order the person to abate the unauthorized waste tire dump. If the person responsible for the unauthorized waste tire dump is not the owner of the property on which the unauthorized waste tire dump is located, the commission may order the property owner to permit abatement of the unauthorized waste tire dump. If the person responsible for the unauthorized waste tire dump fails to comply with the order, the commission shall take any action necessary to abate the unauthorized waste tire dump, including entering the property where the unauthorized waste tire dump is located and confiscating the waste tires or arranging to have the waste tires processed or removed.

(2) When the commission abates any unauthorized waste tire dump pursuant to subsection (1) of this section, the person responsible for the unauthorized waste tire dump shall be liable for the actual costs incurred by the commission including all administrative and legal expenses related to the abatement of the unauthorized waste tire dump. The commission may initiate a civil action to recover these costs from any persons responsible for the unauthorized waste tire dump. Nonpayment of the actual costs incurred by the commission may result in the imposition of a lien on the owner's real property on which the unauthorized waste tire dump is located if the owner has been identified by the commission as a responsible party.

(3) The commission may elect to suspend any or all of the actions against the person responsible contingent upon such factors as the date of formation of the unauthorized waste tire dump, the size of the tire dump, and any other factors which may warrant suspension of actions. The commission may in such cases enter into an agreed consent order with the person responsible whereby the commission agrees to arrange for a contractor to process or remove the waste tires.

(4) When the commission cannot determine a responsible person, the commission may enter into an agreed consent order with the landowner whereby the commission agrees to arrange for a contractor to process or

remove the waste tires. If the landowner refuses to enter into an agreed consent order, the commission may hold the landowner responsible for continuing the existence of the unauthorized dump and the commission may exercise the authority granted in subsections (1) and (2) of this section.

(5) It is the intent of the Legislature that in its enforcement of this section the commission shall consider the availability of facilities for the processing or disposal of waste tires within the geographic area of any unauthorized waste tire dump prior to the issuance of any order imposing a fine against the owner or person responsible for an unauthorized waste tire dump.

SOURCES: Laws, 1991, ch. 531, § 10; Laws, 1993, ch. 500, § 5, eff from and after passage (approved March 30, 1993).

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

§ 17-17-421. Repealed.

Repealed by Laws of 1995, ch. 615, § 5, eff from and after July 1, 1995.

[Laws, 1991, ch. 531, § 11; Laws, 1992, ch. 583 § 9; Laws, 1993, ch. 500, § 6]

Editor's Note — Former § 17-17-421 was entitled: Conduct of demonstration projects; evaluation of efficacy of using recovered rubber or waste tires in highway projects and in preventing beach erosion; reports.

§ 17-17-423. Imposition, administration, collection, enforcement and disposition of waste tire fee.

(1) There is imposed a waste tire fee upon the sale of each new tire sold at wholesale. The fee shall be imposed on any person engaging in the business of making wholesale sales of new tires within this state. The fee shall be imposed at the rate of One Dollar ($1.00) for each new tire sold with a rim diameter of less than twenty-four (24) inches and Two Dollars ($2.00) for each new tire sold with a rim diameter of twenty-four (24) inches or greater. The fee shall be added to the total cost to the purchaser at wholesale; however, a person engaged in the business of making retail sales of tires in this state who purchases tires from a wholesaler or manufacturer outside this state upon which the waste tire fee is not imposed, shall be responsible for remitting the waste tire fee directly to the State Tax Commission in lieu of payment of the tax to the wholesaler or manufacturer. The fee imposed, less five percent (5%) of fees collected, which shall be retained by the tire wholesaler or retailer as collection costs, shall be paid to the State Tax Commission in the form and manner required by the State Tax Commission and shall include a statement showing the total number of new tires sold during the preceding month. The State Tax Commission shall promulgate rules and regulations necessary to administer the fee collection and enforcement.

(2) The State Tax Commission shall administer, collect and enforce the fee authorized under this section under the same procedures used in the admin-

istration, collection and enforcement of the state sales tax imposed under Chapter 65, Title 27, Mississippi Code of 1972, except as provided in this section. The proceeds of the waste tire fee, less five percent (5%) of the proceeds, which shall be retained by the State Tax Commission as collection costs, shall be transferred by the State Tax Commission into the waste tire account of the Environmental Protection Trust Fund.

SOURCES: Laws, 1991, ch. 531, § 12; Laws, 1997, ch. 544, § 5; Laws, 2001, ch. 571, § 1; Laws, 2004, ch. 536, § 1, eff from and after July 1, 2004.

Editor's Note — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Utilization of monies allocated to environmental protection trust fund from waste tire fees, see § 17-17-425.

ATTORNEY GENERAL OPINIONS

This section does not impose on motor vehicle dealers a fee for new tires already mounted on new or used motor vehicles held for sale at retail; such car or truck dealers are not, in the ordinary case and in the ordinary meaning of the words, "engaged in the business of making retail sales of new motor vehicle tires." Hall, Nov. 14, 1991, A.G. Op. #91-0856.

§ 17-17-425. Utilization of monies allocated to environmental protection trust fund from waste tire fees.

(1) Beginning July 1, 1995, monies allocated to the Environmental Protection Trust Fund from waste tire fees shall be accounted for in a waste tire account and shall be utilized for the following purposes:

(a) Not more than sixty percent (60%) shall be utilized for making grants to counties, municipalities or regional solid waste management authorities: (i) for providing a waste tire collection program for small quantity waste tire generators as provided in Section 17-17-409; (ii) for use in clean-up of small scattered unauthorized waste tire dumps not abated under Section 17-17-419; (iii) for matching funds for employment of a solid waste enforcement officer as provided in Section 17-17-65; and (iv) for purchase of products derived from Mississippi waste tires;

(b) Not more than five percent (5%) shall be utilized by the department for abatement of unauthorized waste tire dumps as provided in Section 17-17-419;

(c) Not more than fifteen percent (15%) shall be utilized (i) to provide incentive grants to persons that will manufacture products from waste tires, use recovered rubber from waste tires or use waste tires as a fuel or fuel supplement, (ii) to provide funding for research and demonstration projects directly related to solving solid waste problems resulting from waste tires, including the use of innovative technologies for the processing of waste tires,

(iii) to provide an incentive reimbursement to end users for the costs of using waste tires or waste tire derived materials where those tires originate in the State of Mississippi, if the commission determines an incentive is necessary to promote market development. The commission may determine legitimate end uses that may be eligible for reimbursement and an acceptable rate of reimbursement; and

(d) Not more than twenty percent (20%) shall be utilized by the department to pay the costs of administering these funds and the waste tire management program required under Sections 17-17-405, 17-17-407, 17-17-411, 17-17-413, 17-17-419 and 17-17-423.

(2) To provide for the maximum effective use of funds in the waste tire account, the commission, upon determination that unused funds are available in a particular program as described above, may reallocate funds between the programs described in paragraphs (a) through (c) of subsection (1) to exceed the percentage thresholds.

(3) The commission may consolidate any grant provided under this section with any grant provided under the local governments solid waste assistance program or the Right-Way-To-Throw-Away Program. Funds provided through any consolidated grant shall be used in accordance with the program under which the funds are provided.

(4) The commission shall establish a statewide plan for the use of monies received under Sections 17-17-401 through 17-17-427 and shall adopt regulations for administering this fund. The regulations shall include eligibility requirements for persons requesting incentive grants and funding for research and demonstration projects. No incentive grant or research and demonstration project funding may be awarded for an activity which receives less than seventy-five percent (75%) of its waste tires from Mississippi waste tires sites, retailers or residents. The commission may consider requests for funding from applicants who do not meet this requirement contingent upon the applicant demonstrating that the activity does or will accept Mississippi tires and that the award of the requested funding would be in the best interest of the State of Mississippi. The burden of proof shall be on the applicant to show that eligibility requirements have been met.

(5) For the purpose of establishing a statewide plan for the use of monies received under Sections 17-17-401 through 17-17-427 and proposing regulations for administering this fund, including eligibility requirements and application priorities, the commission shall create an advisory council consisting of members of the tire industry, the general public, the department, and the Department of Economic and Community Development.

(6) The department shall provide technical assistance, upon written request, to a municipality, county or group of counties desiring assistance in applying for waste tire grants or choosing a method of waste tire management which would be an eligible use of the grant funds.

(7) Subject to the authority of the commission in subsection (2) of this section, monies existing in the waste tire account of the Environmental Protection Trust Fund on July 1, 1995, shall remain in the account as

previously allocated but those monies which have been allocated for incentive grants or research and demonstration awards shall be combined as described in subsection (1)(c) of this section.

SOURCES: Laws, 1991, ch. 531, § 13; Laws, 1993, ch. 500, § 7; reenacted and amended, Laws, 1995, ch. 615, § 2; Laws, 1997, ch. 544, § 6; Laws, 2001, ch. 571, § 2, eff from and after July 1, 2001.

Editor's Note — Laws of 1993, ch. 500, § 9, provided for the repeal of this section effective after June 30, 1995. Subsequently, Laws of 1995, ch. 615, § 3, eff from and after July 1, 1995, amended Laws of 1993, ch. 500, § 9, so as to delete the repeal provision.

Cross References — Right-Way-To-Throw-Away Program, see §§ 17-17-430 through 17-17-445.

ATTORNEY GENERAL OPINIONS

A grant, including any commission or fee for administering the grant, would have to conform to the regulations adopted by the commission pursuant Section 17-17-425. If there is no regulation governing this question then the county may pay any fee or commission that is reasonable and permissible under the terms of the grant. Riley, September 6, 1996, A.G. Op. #96-0589.

§ 17-17-427. Hauling or disposal of waste tires in violation of §§ 17-17-401 through 17-17-427.

Any person who hauls or disposes of a waste tire in violation of Sections 17-17-401 through 17-17-427 or any rules and regulations promulgated under those sections may be assessed a civil penalty of Fifty Dollars ($50.00) per violation. Each tire hauled or disposed of in violation of Sections 17-17-401 through 17-17-427 or any rules or regulations promulgated under those sections constitutes a separate violation.

SOURCES: Laws, 1991, ch. 521, § 14; Laws, 1997, ch. 544, § 7, eff from and after July 1, 1997.

Editor's Note — Section 17-17-421, referred to in this section, was repealed by § 5 of Chapter 615, Laws of 1995, effective from and after July 1, 1995.

§ 17-17-429. Disposal of lead acid batteries.

(1) No person may place a lead acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a permitted secondary lead smelter, or to a collection or recycling facility authorized under the laws of this state.

(2) No battery retailer shall dispose of a lead acid battery except by delivery to the agent of a battery wholesaler or a permitted secondary lead smelter, to a battery manufacturer for delivery to a permitted secondary lead smelter or to a collection or recycling facility authorized under the laws of this state.

SOURCES: Laws, 1991, ch. 531, § 15, eff from and after July 1, 1991.

Cross References — Crime of littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

§ 17-17-431. Duties of retail sellers of lead acid batteries.

A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the state shall:

(a) Accept from customers, at the point of transfer, used lead acid batteries in a quantity at least equal to the number of new batteries purchased, if offered by customers; and

(b) Post written notice which must be at least eight and one-half inches (8-½″) by eleven inches (11″) in size and must contain the universal recycling symbol and the following language:

(i) "IT IS ILLEGAL TO DISCARD A MOTOR VEHICLE BATTERY OR OTHER LEAD ACID BATTERY";

(ii) "RECYCLE YOUR USED BATTERIES"; and

(iii) "STATE LAW REQUIRES U.S. TO ACCEPT USED MOTOR VEHICLE BATTERIES OR OTHER LEAD ACID BATTERIES FOR RECYCLING IN EXCHANGE FOR NEW BATTERIES PURCHASED."

SOURCES: Laws, 1991, ch. 531, § 16, eff from and after July 1, 1991.

Cross References — Preparation and distribution of notices required by this section, see § 17-17-433.

§ 17-17-433. Preparation and distribution of notices required by § 17-17-431; inspection of premises and issuance of warnings; penalty for failure to post notice after receipt of warning.

The Department of Environmental Quality shall produce, print and distribute the notices required by Section 17-17-431 to all places where lead acid batteries are offered for sale at retail. In performing its duties under this section, the department may inspect any place, building or premise governed by Section 17-17-431. Authorized employees of the department may issue warnings to a person who fails to comply with the requirement of those sections. Any person who fails to post the required notice after receiving a warning may be subject to a fine of One Hundred Dollars ($100.00) per day.

SOURCES: Laws, 1991, ch. 531, § 17, eff from and after July 1, 1991.

§ 17-17-435. Duty of wholesale sellers of lead acid batteries; removal of batteries accepted in transfer from battery retailers.

Any person selling new lead acid batteries at wholesale shall accept from customers at the point of transfer, used lead acid batteries in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed one hundred eighty (180) days to remove batteries from the retail point of collection.

SOURCES: Laws, 1991, ch. 531, § 18, eff from and after July 1, 1991.

§ 17-17-437. Promulgation, etc., of rules and regulations for implementation of §§ 17-17-429 through 17-17-445; penalties for violations.

The commission may adopt, modify, repeal, promulgate, make exceptions to, grant exemptions and variances from and enforce rules and regulations required to implement Sections 17-17-429 through 17-17-445. Unless a different penalty is specifically prescribed, any person found guilty by the commission of violating Sections 17-17-401 through 17-17-445, any rule or regulation or written order promulgated or issued by the commission shall be subject to the penalties prescribed in Section 17-17-29.

SOURCES: Laws, 1991, ch. 531, § 19; Laws, 1997, ch. 544, § 8, eff from and after July 1, 1997.

§ 17-17-439. Creation of "Right-Way-To-Throw-Away Program."

To ensure the proper collection and management of hazardous wastes from households, farms, schools and small businesses, there is hereby created a program to be known as the "Right-Way-To-Throw-Away Program."

SOURCES: Laws, 1991, ch. 531, § 20, eff from and after July 1, 1991.

§ 17-17-441. Development and administration of program; promulgation of rules and regulations for administration of funds for grants for establishment of household hazardous waste collection and management programs.

(1) The department shall develop and administer the Right-Way-To-Throw-Away Program.

(2) The commission shall promulgate rules and regulations for the administration of funds, as may be appropriated or otherwise made available, for grants to counties, municipalities and multicounty agencies for the establishment and operation of household hazardous waste collection and management

programs. The commission shall give priority to those programs operated by multicounty agencies.

SOURCES: Laws, 1991, ch. 531, § 21, eff from and after July 1, 1991.

Cross References — Powers and duties as to administration of program, see § 17-17-445.

§ 17-17-443. Registration and approval of programs for collection and management of household hazardous wastes; maintenance and submission of records.

No person shall establish a program for the collection and management of household hazardous wastes until such program has been registered with and approved by the department. Each person shall also maintain and submit records to the department as required under the guidelines developed under Section 17-17-445.

SOURCES: Laws, 1991, ch. 531, § 22, eff from and after July 1, 1991.

§ 17-17-445. Powers and duties regarding administration of program.

(1) The department shall have the following powers and duties in the administration of the Right-Way-To-Throw-Away Program established under Sections 17-17-439 through 17-17-445:

(a) To determine the types of household hazardous wastes to be handled in the program;

(b) To approve any collection contractor or contractors used in the implementation of a local household hazardous waste collection and management program;

(c) To prepare a request for proposals, select a collection contractor and facilitate the use of that contractor on a statewide basis to conduct all local household hazardous waste collection and management programs;

(d) To establish guidelines for the registration and operations of household hazardous waste collection and management programs;

(e) To inspect any collection site operated under Sections 17-17-439 through 17-17-445 to insure that collection is performed in a safe and environmentally sound manner;

(f) To develop record keeping requirements identifying types and amounts of household hazardous wastes collected, entities submitting household hazardous waste and the points of ultimate disposition;

(g) To submit an annual report to the Governor and the Legislature summarizing the operation and costs of the program, including location of sites, types and amounts of waste collected, entities disposing of waste at the collection sites and the methods utilized for disposal of the wastes; and

(h) To exercise any other powers and duties as the department may require to administer the Right-Way-To-Throw-Away Program.

(2) The commission may consolidate any grant provided under this section with any grant provided under the local governments solid waste assistance program or the waste tire management program. Funds provided through any consolidated grant shall be used in accordance with the program under which the funds are provided.

SOURCES: Laws, 1991, ch. 531, § 23; Laws, 1992, ch. 583 § 10; Laws, 1997, ch. 544, § 9, eff from and after July 1, 1997.

DISCLOSURE REQUIREMENTS OF APPLICANTS FOR COMMERCIAL HAZARDOUS OR NONHAZARDOUS SOLID WASTE FACILITY PERMITS

Sec.	
17-17-501.	Definitions.
17-17-503.	Filing of disclosure statements by applicants for issuance, reissuance or transfer of permits pertaining to waste management facilities; contents; updating of statements.
17-17-505.	Grounds for refusal of issuance, reissuance or transfer of permits pertaining to waste management facilities; factors considered where applicants have engaged in unlawful activities.
17-17-507.	Consideration of performance history of public agencies applying for permits.

§ 17-17-501. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Applicant" means any person except a public agency applying for a permit to operate and/or construct a commercial nonhazardous solid waste management facility or commercial hazardous waste management facility. If a public agency applies for a permit and proposes to operate a facility by contract, the contractor shall also be required to file a disclosure statement as described in Section 17-17-503 and the permit board shall evaluate such statement as described in Section 17-17-505.

(b) "Business concern" means any corporation, association, firm, partnership, trust, joint venture or other form of commercial organization.

(c) "Key employee" means any person employed by an applicant in a management capacity and empowered to make operational or financial management decisions with respect to solid waste or hazardous waste management operations of the business concern as determined by the commission, but shall not include employees primarily engaged in the physical or mechanical treatment, processing, storage or disposal of solid or hazardous waste.

(d) "Public agency" means any incorporated city or town, county, political subdivision, governmental district or unit, public corporation, public institution of higher learning, community college district, planning and development district or governmental agency created under the laws of the state.

SOURCES: Laws, 1991, ch. 583, § 1, eff from and after passage (approved April 12, 1991).

§ 17-17-503. Filing of disclosure statements by applicants for issuance, reissuance or transfer of permits pertaining to waste management facilities; contents; updating of statements.

(1) Every applicant for issuance, reissuance or transfer of a permit for the treatment, processing, storage or disposal of solid waste at a commercial nonhazardous solid waste management facility or hazardous waste at a commercial hazardous waste management facility shall file with the permit board at the time the application is filed a disclosure statement. The disclosure statement shall be sworn to or affirmed and subscribed and dated by the applicant. The disclosure statement shall be filed on forms supplied by the department and shall contain the following information:

(a)(i) If the applicant is an individual, the full name, business address, date of birth and Social Security number of the applicant; or

(ii) If the applicant is a business concern, the full name, business address, date of establishment, and federal employer identification number of the business concern, and the full names, business addresses, dates of birth and Social Security numbers of any officers, directors, partners or key employees thereof and all persons or business concerns holding equity in that business concern, or if the business concern is a publicly traded corporation, an individual holding more than five percent (5%), individuals related within third degree holding a cumulative of five percent (5%) or more or business concerns holding more than five percent (5%) of the equity in that business concern, except where the equity is held by an investment company which is publicly traded or a chartered lending institution, in which case the applicant need only supply the name and business address of the investment company or lending institution;

(b) The full names, business addresses, dates of birth and Social Security numbers of all officers, directors or partners of any business concern disclosed in the statement and the name and addresses of all persons holding any equity in any business concern so disclosed, if the business concern is a publicly traded corporation, an individual holding more than five percent (5%), individuals related within third degree holding a cumulative of five percent (5%) or more or business concerns holding more than five percent (5%) of the equity in that business concern, except where the equity is held by an investment company which is publicly traded or a chartered lending institution, in which case the applicant need only supply the name and business address of the investment company which is publicly traded or lending institution;

(c) A listing of all persons or business concerns holding debt liability in a non-publicly traded applicant business concern. If the applicant business concern is publicly traded, a listing of all individuals or business concerns holding more than five percent (5%), or individuals related within the third degree holding a cumulative of five percent (5%) or more debt liability in the applicant business concern. In accordance with the debt liability disclosure requirements for applicants, any business concern disclosed pursuant to paragraph (b) shall provide a listing of debt liability holders. The listing of debt liability holders shall include for each person or business concern the full name, business address, federal employer identification number, amount of debt liability held in U.S. dollars and the percentage of the total debt liability held. For the purposes of this section, individuals and business concerns disclosed pursuant to this paragraph are not subject to further disclosure requirements and shall not be considered a "disclosed business concern" unless expressly requested by the permit board.

(d) The full name and business address of any company which collects, transports, treats, processes, stores or disposes of solid or hazardous waste in which the applicant holds an equity interest of five percent (5%) or more;

(e) A description of the business experience and credentials, including any past or present permits or licenses for the treatment, processing, storage or disposal of solid or hazardous waste possessed by the applicant, or if the applicant is a business concern, by the key employees, officers, directors or partners thereof;

(f) A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise) or license or permit suspensions or revocations, or enforcement actions of any sort by any state or federal authority within the five-year period immediately preceding the filing of the application, which are pending or have concluded in a finding of violation or entry of a consent agreement regarding any allegation of civil or criminal violation of any law, regulation or requirement related to the treatment, processing, storage or disposal of solid or hazardous waste by any person required to be disclosed in the statement and an itemized list by any person required to be disclosed in the statement of all final convictions of and pleas of guilty or nolo contendere to any crime punishable as a felony in any jurisdiction within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit;

(g) A listing of any agencies outside of Mississippi which had regulatory responsibility over the applicant in connection with its treatment, processing, storage or disposal of solid or hazardous waste; and

(h) Any other information the permit board may require related to the disclosure statement as described above or the evaluation of such statement as described in Section 17-17-505.

(2) The disclosure statement shall be updated as required by the permit board, but not more frequently than annually.

(3) The provisions of subsections (6) and (7) of Section 17-17-27 shall be applicable to information submitted by the applicant to the permit board under this section.

(4)(a) The provisions of this subsection shall apply only to applicants for permits involving the storage, treatment, processing or disposal of nonhazardous solid waste only.

(b) The Commission on Environmental Quality may waive the filing of disclosure information required by this section if the information regards the holder of less than five percent (5%) of the equity of the applicant or the holder of less than five percent (5%) of the equity in any business concern which holds equity in the applicant.

(c) In order to apply for the waiver, the applicant shall file a sworn petition requesting such waiver and allege either (i) that the information cannot be ascertained after reasonable and diligent search and inquiry, setting forth in the petition the facts and circumstances alleged to constitute the reasonable and diligent search and inquiry to obtain the information or (ii) the information required is not relevant or material, setting forth in the petition the facts and circumstances in support of the irrelevancy or immateriality of the information.

(d) The commission may waive the filing of such information if the commission finds and declares such information either (i) to be unobtainable after reasonable and diligent search and inquiry or (ii) to be irrelevant or immaterial to the review of the application and (iii) unnecessary to the discharge of its responsibilities with regard to such permit as set forth by law.

(e) Any applicant, other person or interested party aggrieved by an order of the commission waiving the filing of such information may appeal the decision of the commission in the manner provided in Section 49-17-41, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 583, § 2; Laws, 1992, ch. 583 § 11; Laws, 1994, ch. 540, § 1, eff from and after passage (approved March 29, 1994).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (c) of subsection (1). The word "percent" was inserted after the word "five". The Joint Committee ratified the correction at its December 3, 1996 meeting.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state hazardous waste regulations. 86 A.L.R.4th 401.

§ 17-17-505. Grounds for refusal of issuance, reissuance or transfer of permits pertaining to waste management facilities; factors considered where applicants have engaged in unlawful activities.

(1) The permit board may refuse to issue, reissue or transfer a permit for the treatment, processing, storage or disposal of solid waste at a commercial nonhazardous solid waste management facility or hazardous waste at a commercial hazardous waste management facility if the permit board finds

that the applicant or any person required to be listed in the disclosure statement:

(a) Has misrepresented or concealed any material fact in the disclosure statement;

(b) Has obtained a permit from the permit board by misrepresentation or concealment of a material fact;

(c) Has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving any federal or state laws, including environmental laws, within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit;

(d) Has habitually violated any provisions of federal or state environmental laws, rules or regulations related to the management of solid or hazardous waste within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit;

(e) Has been adjudicated in contempt of an order of any court enforcing any state or federal environmental laws within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit;

(f) Has been convicted of or pleaded guilty or nolo contendere to bribery or attempting to bribe a public officer or employee of the federal government, or any state or local government in the United States, in the public officer's or employee's official capacity within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit; or

(g) Has been convicted of or pleaded guilty or nolo contendere to collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price within the five-year period immediately preceding the filing of the application for the issuance, reissuance or transfer of a permit.

(2) In determining whether to issue, reissue or transfer a permit for the treatment, processing, storage or disposal of solid waste at a commercial nonhazardous solid waste management facility or hazardous waste at a commercial hazardous waste management facility, the permit board shall consider the facts and any mitigating factors including:

(a) The relevance of the offense to the business for which a permit is sought or the nature and responsibilities of the position which a convicted individual would hold;

(b) The nature and seriousness of the offense;

(c) The circumstances under which the offense occurred;

(d) The date of the offense;

(e) The ownership and management structure in place at the time of the offense.

(3) The permit board shall allow the applicant to submit evidence of rehabilitation and shall consider the applicant's efforts to prevent recurrence of unlawful activity in its determination under subsection (2) of this section. Items to be considered by the permit board shall include:

(a) The applicant's record and history of implementing successful corrective actions undertaken to prevent or minimize the likelihood of recurrence of the offense;

(b) Whether the offense was an isolated or repeated incident;

(c) Whether the applicant cooperated with governmental bodies during investigations or voluntarily provided information regarding any offense under consideration;

(d) The number and types of permits held by the applicant, and the experience of the applicant in conducting its business;

(e) Implementation by the applicant of formal policies, training programs, or management controls to substantially minimize or prevent the occurrence of future violations or unlawful activities;

(f) Implementation by the applicant of an environmental compliance auditing program to assess and monitor compliance with environmental laws, rules, regulations and permit conditions; and

(g) The applicant's discharge of individuals or severance of the interest of or affiliation with responsible parties, who would otherwise cause the permit board to deny a permit.

(4) If the permit board finds pursuant to this section that mitigating factors exist or that the applicant has demonstrated rehabilitation, the permit board may issue, reissue or transfer the permit for the treatment, processing, storage or disposal of solid waste at a commercial nonhazardous solid waste management facility or hazardous waste at a commercial hazardous waste management facility.

SOURCES: Laws, 1991, ch. 583, § 3, eff from and after passage (approved April 12, 1991).

Cross References — Filing of disclosure statements, see § 17-17-503.

§ 17-17-507. Consideration of performance history of public agencies applying for permits.

If a public agency applies for a permit, the permit board shall consider the performance history of the public agency as prescribed by Section 17-17-27. The provisions of Sections 17-17-501 through 17-17-507 shall be supplemental and in addition to Section 17-17-27, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 583, § 4, eff from and after passage (approved April 12, 1991).

CHAPTER 18

Mississippi Hazardous Waste Facility Siting Act of 1990

Sec.
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§ 17-18-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Hazardous Waste Facility Siting Act of 1990."

SOURCES: Laws, 1990, ch. 506, § 1, eff from and after passage (approved March 31, 1990).

Cross References — Duties of Department of Finance and Administration with respect to this chapter, see § 27-104-103.

§ 17-18-3. Legislative intent.

It is the intent of the Legislature that:

(a) The generation of hazardous waste should be reduced or eliminated at the source and hazardous waste that is generated should be recycled, reused or minimized; and

(b) This chapter shall describe a process to identify appropriate hazardous waste management technologies and to site a state commercial hazardous waste management facility and if determined necessary design, finance, construct and operate a state commercial hazardous waste management facility.

SOURCES: Laws, 1990, ch. 506, § 2, eff from and after passage (approved March 31, 1990).

§ 17-18-5. Definitions.

For purposes of this chapter the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

(a) "Advisory committee" means the designated site local advisory committee created under Section 17-18-35.

(b) "Authority" means the Hazardous Waste Facility Siting Authority created under Section 17-18-7.

(c) "Committee" means the Hazardous Waste Technical Siting Committee created under Section 17-18-11.

(d) "Department" means the Department of Finance and Administration.

(e) "Hazardous waste" means hazardous waste as defined under Section 17-17-3.

(f) "Local governmental unit" means any town, municipality or county.

(g) "State commercial hazardous waste management facility" means a facility which receives hazardous wastes directly or indirectly from more than one (1) generator for the storage, processing, treatment, recycling, recovery or disposal of hazardous wastes for a fee and is authorized under this chapter.

SOURCES: Laws, 1990, ch. 506, § 3, eff from and after passage (approved March 31, 1990).

§ 17-18-7. Hazardous Waste Facility Siting Authority.

(1) There is hereby created the Hazardous Waste Facility Siting Authority, which shall be located within the Department of Finance and Administration. The authority shall exercise all of its powers independently of the department and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the executive director of the department only with respect to the management functions of administration, coordination and reporting.

(2) The authority shall continue in existence until thirty (30) days after the department acquires a site. Upon the termination of the authority all of its rights and properties shall pass to and be vested in the state.

(3) The department shall provide such technical, clerical and other support services and personnel as the authority may require in the performance of its functions. The executive director of the department shall be the chief administrative officer of the authority.

(4) The Governor shall appoint five (5) members, one (1) from each congressional district as constituted on January 1, 1990, with the advice and consent of the Senate. Members of the authority shall include persons with expertise available in the technical, legal, financial and other aspects of hazardous waste management and shall represent insofar as practicable the diverse interests of the state. Original appointments to this authority shall be made on or before July 1, 1990, and shall be for a term ending thirty (30) days after the state acquires the site. The Governor shall require adequate disclosure of potential conflicts of interest by members of the authority. Vacancies on the authority shall be filled by appointment in the same manner as the original appointments.

(5) Members of the authority shall receive per diem as provided by Section 25-3-69 and reimbursement of travel expenses as provided by Section 25-3-41 for each day spent in the actual discharge of their duties when attending a meeting of the authority.

SOURCES: Laws, 1990, ch. 506, § 6, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this authority, see § 17-18-41.

Duties of department of finance and administration with respect to a hazardous waste management facility, see § 27-104-103.

Federal Aspects — Hazardous materials transportation uniform safety act of 1990, see 49 USCS §§ 5101 et seq.

§ 17-18-9. Powers and duties of authority.

The authority shall exercise the following powers and duties in carrying out the purposes of this chapter:

(a) It shall adopt rules specifying the criteria and methodology for site selection as submitted by the Hazardous Waste Technical Siting Committee.

(b) It shall select one (1) site as the designated site for the state commercial hazardous waste management facility from the three (3) candidate sites submitted by the Hazardous Waste Technical Siting Committee. The site selection shall be made in writing to the Governor and executive director of the department.

(c) It may conduct or cause to be conducted any studies, analyses or evaluations.

(d) It may apply and contract for and accept any grants or gifts in furtherance of the activities of the authority.

(e) It may enter into contracts and perform all acts necessary, convenient or desirable to carry out any power expressly granted to the authority under this chapter. All contracts shall be executed by the Department of Finance and Administration subject to final approval by the authority.

(f) It shall conduct such public meetings or hearings as may be necessary or appropriate and make a permanent record thereof, in furtherance of the activities of the authority.

SOURCES: Laws, 1990, ch. 506, § 7, eff from and after passage (approved March 31, 1990).

Cross References — Duty of authority to select site for hazardous waste management facility, see § 17-18-21.

Immunity from personal liability for members, officers or employees of this authority, see § 17-18-41.

§ 17-18-11. Hazardous Waste Technical Siting Committee.

(1) There is hereby created the Hazardous Waste Technical Siting Committee, which shall be located within the Department of Finance and Administration. The committee shall exercise all of its powers independently of the department and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the executive director of the department only with respect to the management functions of administration, coordination and reporting.

(2) The committee shall continue in existence until thirty (30) days after facility operation begins. Upon the termination of the committee all of its rights and properties shall pass to and be vested in the state.

(3) The department shall provide such technical, clerical and other support services and personnel as the committee may require in the performance of its functions. The executive director of the department shall be the chief administrative officer of the committee.

(4) The committee shall not exceed twelve (12) members: one (1) of whom shall be the director of the emergency management agency, one (1) of whom shall be the state economist, one (1) of whom shall be the Executive Director of the Department of Economic and Community Development, one (1) of whom shall be the Director of the Highway Department, one (1) of whom shall be the State Chemist and not more than seven (7) members to be appointed by the Commissioner of Higher Education from persons with technical expertise in geology, water resources, environmental engineering, environmental biology/ecology, environmental health, sociology, governmental affairs, production agriculture or cultural resources. The Commissioner of Higher Education shall appoint the members on or before July 1, 1990. Members appointed by the Commissioner of Higher Education shall be knowledgeable in aspects of hazardous waste management.

(5) Members of the committee may designate substitute or alternate members to act in their stead should they be unable to attend any meeting or perform any function of the committee.

(6) Members of the committee shall be reimbursed for expenses in accordance with Section 25-3-41.

SOURCES: Laws, 1990, ch. 506, § 8, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this committee, see § 17-18-41.

Commissioner of Higher Education, see § 37-101-7.

Executive Director of the Department of Economic and Community Development, see § 57-1-5.

State Chemist, see § 57-21-7.

Director of Highway Department, see § 65-1-9.

§ 17-18-13. Powers and duties of committee.

The committee shall exercise the following powers and duties in carrying out the purposes of this chapter:

(a) It shall recommend to the authority, in accordance with the hazardous waste management category determination as provided in Section 49-29-7, the technology and design capacity for each component of the state commercial hazardous waste management facility operated under this chapter.

(b) It shall develop criteria and methodology for selecting sites for the state hazardous waste management facility.

(c) It shall actively seek volunteer communities interested in hosting the state commercial hazardous waste management facility.

(d) It shall implement the site selection criteria and the site selection methodology to determine three (3) candidate sites for the state commercial hazardous waste management facility. The determination shall be made in writing to the Hazardous Waste Facility Siting Authority. Priority shall be given to the evaluation of potential sites located on state-owned property and in communities volunteering to host the state commercial hazardous waste management facility. If the site is to be located on state-owned land, then the site shall consist of a tract of land of not less than three hundred (300) acres owned by the state on March 31, 1990, but it shall not be necessary for the entire tract to be used in the operation of the facility.

(e) It may request information and assistance from any state agency which has data or expertise which would assist the committee in the identification of sites, provided that no agency which has authority to issue a license or permit for the construction or operation of the facility shall participate in the site selection process in any way that would result in an actual or apparent conflict of interest.

(f) It may conduct, or cause to be conducted, any studies, analyses or evaluations.

(g) It may apply and contract for and accept any grants or gifts in furtherance of the activities of the committee.

(h) It may enter into contracts and do all acts necessary, convenient or desirable to carry out any power expressly granted to the committee under this chapter. All contracts shall be executed by the Department of Finance and Administration subject to final approval by the committee.

(i) It shall conduct such public meetings or hearings as may be necessary or appropriate and make a permanent record thereof, in furtherance of the activities of the committee.

SOURCES: Laws, 1990, ch. 506, § 9, eff from and after passage (approved March 31, 1990).

Editor's Note — Section 49-29-7 referred to in (a) was repealed by Laws of 1993, ch. 516, § 10, effective from and after June 30, 1993. For present provisions governing hazardous wastes, generally, see §§ 17-17-1 et seq.

Cross References — Committee to give priority to recommendations of sites on state-owned land described in this section, see § 17-18-19.

Duty of committee to recommend sites for hazardous waste management facility, see § 17-18-19.

Authority to give priority to selection of site on state-owned land described in this section, see § 17-18-21.

Immunity from personal liability for members, officers or employees of this committee, see § 17-18-41.

§ 17-18-15. Committee to develop site-selection criteria and methodology; considerations; public hearing.

(1) On or before April 1, 1991, the committee shall develop criteria and methodology for selecting sites for the state commercial hazardous waste management facility. Site-selection criteria and methodology shall be specifically adapted to take into account the technologies and design capacity of the state commercial hazardous waste management facility. Site-selection criteria and methodology shall be developed with and provide for public participation; shall be incorporated into rules; shall include a written justification for each criterion; shall be consistent with all applicable federal and state laws, including statutes, regulations and rules; shall be developed in light of the best available scientific data; shall be applied equally to all counties of the state and shall be based on consideration of at least the following factors:

(a) Hydrological and geological factors, including, but not limited to, flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope and climate;

(b) Environmental and public health factors, including, but not limited to, air quality, quality of surface and groundwater and proximity to public water supply/watersheds;

(c) Natural and cultural resources, including, but not limited to, wetlands, game lands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves and historic sites;

(d) Socioeconomic factors, including, but not limited to, impact on local land uses, property values and governmental services;

(e) Transportation factors, including, but not limited to, proximity to waste generators, route safety and method of transportation;

(f) Aesthetic factors, including, but not limited to, visibility, appearance and noise level of the facility;

(g) Availability and reliability of public utilities;

(h) Availability of emergency response personnel and equipment.

(2) The committee shall hold a public hearing prior to the finalization of the site selection criteria and the site selection methodology.

SOURCES: Laws, 1990, ch. 506, § 10, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this committee, see § 17-18-41.

Federal Aspects — Hazardous materials transportation uniform safety act of 1990, see 49 USCS §§ 5101 et seq.

§ 17-18-17. Volunteer host community for hazardous waste management facility; procedures for volunteering.

(1) Except as provided in subsection (2) of this section, a community desiring to volunteer to host the state commercial hazardous waste management facility to be operated pursuant to this chapter may propose to do so by the adoption of a resolution by a majority vote of the governing body of the local governmental unit. The committee shall determine the adequacy of any proposal to voluntarily host the state commercial hazardous waste management facility. Once a proposal to volunteer to host the state commercial hazardous waste management facility has been accepted in writing by the committee, the resolution making such proposal may not be rescinded by the governing body of the local governmental unit, unless the management category or categories determined under Section 49-29-7 is changed after the date of the submission of such category determination to the Hazardous Waste Technical Siting Committee. The governing body of the local governmental unit shall hold a minimum of two (2) public hearings prior to submission of a resolution regarding any proposal to volunteer to host the state commercial hazardous waste management facility pursuant to this chapter. The governing body of the local governmental unit shall advertise its intent to hold the public hearings. The advertisement shall be in a newspaper of general circulation in the county. The advertisement shall be no less than one-fourth (¼) page in size and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth (¼) inch solid black border. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week. It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter. The advertisement shall be run once each week for the two (2) weeks preceding the public hearings. The advertisement shall state that the governing body will meet on a certain day, time and place fixed

in the advertisement, which shall be not less than seven (7) days after the day the first advertisement is published, for the purpose of hearing comments regarding the proposed resolution and to explain the reasons for the proposed resolution.

(2) Washington County and Issaquena County are hereby designated as volunteer host communities without having to comply with the requirements of subsection (1) of this section.

(3) This section shall not be construed to give priority for the evaluation of potential sites to any one (1) volunteer host community over any other volunteer host community, regardless of whether the designation of a governmental unit as a volunteer host community is accomplished under subsection (1) or subsection (2) of this section.

SOURCES: Laws, 1990, ch. 506, § 11, eff from and after passage (approved March 31, 1990).

Editor's Note — Section 49-29-7 referred to in (1) was repealed by Laws of 1993, ch. 516, § 10, effective from and after June 30, 1993. For present provisions governing hazardous wastes, generally, see §§ 17-17-1 et seq.

§ 17-18-19. Committee to recommend sites for facility.

(1) On or before October 1, 1991, the committee shall recommend in writing to the authority three (3) candidate sites for the state commercial hazardous waste management facility. The recommendation shall include a comparative evaluation relative to the site selection criteria of each candidate site with other sites and locations that were considered and a description of the implementation of the site selection methodology by which the sites were recommended. Priority shall be given to the recommendation of candidate sites meeting all of the site selection criteria located on state-owned land described in Section 17-18-13(d) and in communities interested in voluntarily hosting the state commercial hazardous waste management facility.

(2) The committee shall hold a public hearing in the county of each of the three (3) candidate sites prior to their recommendation to the authority.

SOURCES: Laws, 1990, ch. 506, § 12, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this committee, see § 17-18-41.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 17-18-21. Authority to designate site for facility.

(1) On or before January 1, 1992, the authority shall submit in writing to the Governor and the executive director of the department the designated site for the state commercial hazardous waste management facility. The designation shall include a description of the decision process by which the designated site was selected. Priority shall be given to the selection of a designated site meeting all of the site selection criteria located on state-owned land described in Section 17-18-13(d) and in communities interested in voluntarily hosting the state commercial hazardous waste management facility.

(2) The authority shall hold a public hearing in the county of each of the three (3) candidate sites prior to their submission of the designated site to the Governor and the executive director of the department.

(3) If it is determined that any permit or license necessary for the construction or operation of the state commercial hazardous waste management facility cannot be obtained if the facility is located at the designated site, then the authority shall designate a site from the remaining two (2) candidate sites.

SOURCES: Laws, 1990, ch. 506, § 13, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this authority, see § 17-18-41.

§ 17-18-23. Acquisition of selected site.

On or before October 1, 1992, the executive director of the department shall purchase or, if necessary, otherwise acquire property for the site on behalf of the state. If purchased, fee simple title to real property shall be vested in the State of Mississippi by and through the department.

SOURCES: Laws, 1990, ch. 506, § 14, eff from and after passage (approved March 31, 1990).

§ 17-18-25. Contracts for design, construction and operation of facility; failure to execute contracts.

The department shall actively seek a qualified private contractor or contractors to design, construct and operate the state commercial hazardous waste management facility. A single contractor may design, construct and operate the facility. If the department is unable to successfully negotiate and execute a contract or contracts for the design, construction and operation of the state commercial hazardous waste management facility not later than January 1, 1993, the executive director of the department shall certify to the Governor in writing that the department has taken all actions necessary or convenient to secure an executed contract or contracts for the design, construction and operation of the state commercial hazardous waste management facility. After the written certification, the department shall design, construct and operate the state commercial hazardous waste management facility.

SOURCES: Laws, 1990, ch. 506, § 15, eff from and after passage (approved March 31, 1990).

Cross References — One-time local application fee for permit to operate facility, see § 17-18-35.

§ 17-18-27. Sale of site property.

The department may sell the real property for the site and any improvements thereon to any non-governmental entity that meets all requirements mandated by federal law and regulations and all requirements mandated by state law and regulations for the operation of a commercial hazardous waste management facility. If the department decides to sell the property, then the property shall be offered for sale on the basis of competitive bidding after advertisement therefor and such property shall be sold to the highest and best bidder, but in no event shall the property be sold at less than the appraised value at the time of the sale as determined by three (3) competent appraisers selected by the department. If all bids received by the department are insufficient, the department may reject all bids received and readvertise for bids.

SOURCES: Laws, 1990, ch. 506, § 16, eff from and after passage (approved March 31, 1990).

§ 17-18-29. Site closure plan; post-closure monitoring; maintenance and remedial actions.

(1) The department shall enter into an agreement with the operator of the state commercial hazardous waste management facility for the safe and proper closure of the facility. The operator's site closure plan shall be subject to the approval of the department. The approval of the department under this section is in addition to the approval of the Department of Environmental Quality in accordance with the rules and regulations of the Commission on Environmental Quality. The department may employ an independent contractor to properly close the state commercial hazardous waste management facility and to ensure the site is stabilized.

(2) The department shall provide for such post-closure physical surveillance and environmental monitoring of the state commercial hazardous waste management facility as may be required by the Department of Environmental Quality, the U.S. Environmental Protection Agency and by agreement with the host community.

(3) The department shall provide through its own personnel, private contractor, cooperative agreement with other governmental agencies or any combination thereof, any active maintenance or remedial actions that may be

required. Payment for the costs thereof shall be made from the perpetual care fund established pursuant to this chapter.

SOURCES: Laws, 1990, ch. 506, § 17, eff from and after passage (approved March 31, 1990).

Cross References — Perpetual Care Fund, see § 17-18-31.
Department of Environmental Quality, see § 49-2-4.
Commission on Environmental Quality, see § 49-2-5.

§ 17-18-31. Perpetual Care Fund; purposes of fund; funding.

(1) There is hereby created in the State Treasury a fund to be designated as the "Perpetual Care Fund," hereinafter referred to in this section as "fund," which may be used for:

(a) Administration of the fund;

(b) Emergency response and decontamination at the state commercial hazardous waste management facility;

(c) Post-closure physical surveillance, environmental monitoring, maintenance, care, custody and remedial action at the state commercial hazardous waste management facility.

(2) Expenditures may be made from the fund upon requisition to the Treasurer by the executive director of the department.

(3) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(4) In addition to any money that may be appropriated or otherwise made available to it, the fund shall be maintained by user fees and other charges, including nonregulatory penalties, surcharges or other money paid to or recovered by or on behalf of the department.

(5) Fees and other charges shall at all times be sufficient to build and maintain the fund balance at a level determined by the department, in consultation with the Department of Environmental Quality.

(6) The establishment of this fund shall in no way be construed to relieve or reduce the liability of any facility operator, contractor or other person for damages resulting from the operation of the state commercial hazardous waste management facility.

SOURCES: Laws, 1990, ch. 506, § 18, eff from and after passage (approved March 31, 1990).

Cross References — Department of Environmental Quality, see § 49-2-4.

§ 17-18-33. Fees generally; contracts for operation of facilities; cost considerations in establishing and revising fee schedules; use of excess funds.

(1) For the state commercial hazardous waste management facility the department, in consultation with the Department of Environmental Quality,

shall establish and revise as necessary schedules of user fees and other charges, including nonregulatory penalties and surcharges. For facilities operated by private enterprise pursuant to this chapter, the department, in consultation with the Department of Environmental Quality, shall establish and revise as necessary schedules of franchise fees. The terms and conditions under which facilities are operated by private enterprise pursuant to this chapter shall be governed by appropriate contracts between the department and the private operator. Such contracts shall provide for the payment of franchise fees and for the periodic adjustment thereof.

(2) In establishing and revising such schedules of fees, the department shall consider and shall seek to recover, to the maximum extent possible, the following costs:

(a) Establishment and operation of the authority and committee;

(b) Administrative costs of the department in support of its activities under this chapter;

(c) Establishment and administration of the Perpetual Care Fund;

(d) Repayment to the state with interest of all funds expended from the State General Fund in the development of the state commercial hazardous waste management facility;

(e) Compensation of contractors and consultants employed by the department, authority and committee in furtherance of the purposes of this chapter;

(f) Other expenses incurred by the department, the state or its agencies in furtherance of the purposes of this chapter.

(3) If revenues exceed all costs set out and all other costs and charges for which the department is liable, such excess funds shall be paid into a special fund hereby created in the State Treasury to fund a portion of the costs of the Mississippi Comprehensive Waste Minimization Program administered by the Department of Environmental Quality, other programs which foster multimedia waste prevention, reduction, reuse and recycling, programs which provide assistance to small quantity generators and other programs for environmental protection purposes.

SOURCES: Laws, 1990, ch. 506, § 19, eff from and after passage (approved March 31, 1990).

Cross References — Department of Environmental Quality, see § 49-2-4.
Comprehensive Waste Minimization Program, see § 49-31-1 et seq.

§ 17-18-35. Designated site local advisory committee; membership; powers; one-time local application fee for permit to operate facility.

(1) Upon site designation for the state commercial hazardous waste management facility, the governing body of the local governmental unit wherein the site is designated may appoint a designated site local advisory committee. The advisory committee shall consist of seven (7) members repre-

senting insofar as possible local government, environmental, health, engineering, business and industry, agricultural, academic, public interest and emergency response groups. If the designated site is in a municipality, the governing body of the county in which the municipality is located may appoint two (2) of the seven (7) members of the advisory committee. The advisory committee shall elect a chairman, vice chairman and a secretary. Vacancies shall be filled by the governing body of the local governmental unit using the same criteria employed in the original appointments. The governing body of the local governmental unit shall provide the advisory committee with the necessary support staff.

(2) The designated site local advisory committee may:

(a) Study the costs and benefits associated with the state commercial hazardous waste management facility;

(b) Review all permit and license applications and related documents concerning the proposed facility;

(c) Hire program and technical consultants to assist in the review process;

(d) Assess the potential local environmental and socioeconomic impacts of the proposed facility;

(e) Promote public education, information and participation in the permitting process;

(f) Develop and propose agreements between the department, the state commercial hazardous waste management facility operator, local governments and other persons;

(g) Develop and present recommendations concerning permit conditions, operational requirements, compensation and incentives related to the proposed facility;

(h) Hire a mediator to facilitate negotiations between the department and the governing body of the local governmental unit;

(i) Reimburse the advisory committee members for reasonable and necessary expenses.

(3) An applicant for a permit to operate the state commercial hazardous waste management facility shall pay a one-time local application fee of One Hundred Thousand Dollars ($100,000.00). If the applicant is a private firm, the local application fee shall be paid to the department, which shall disburse the local application fee to the governing body of the local governmental unit. If the applicant is the department, the department shall pay and disburse the local application fee directly to the governing body of the local governmental unit.

SOURCES: Laws, 1990, ch. 506, § 20, eff from and after passage (approved March 31, 1990).

Cross References — Immunity from personal liability for members, officers or employees of this committee, see § 17-18-41.

§ 17-18-37. Grant for volunteer host community which is designated site; host community authorized to obtain loan from hazardous waste facility site revolving loan fund; negotiations between governing body of host community and department for percentage of gross receipts from facility.

(1) A volunteer host community which is the designated site shall be paid a grant of One Million Dollars ($1,000,000.00) from the State General Fund after the state commercial hazardous waste management facility is permitted and construction thereof has commenced.

(2) A host community which is the designated site for the state commercial hazardous waste management facility may obtain a loan from the Hazardous Waste Facility Site Revolving Loan Fund under Section 17-17-55.

(3) The governing body of a host community for the state commercial hazardous waste management facility may negotiate with the department in accordance with Section 17-18-39 for a percentage of annual gross receipts from the facility, emergency response resources and training and public information, education and outreach programs, among other incentives.

SOURCES: Laws, 1990, ch. 506, § 21, eff from and after passage (approved March 31, 1990).

§ 17-18-39. Local governmental unit may negotiate with department; issues excluded; arbitration.

(1) The governing body of any local governmental unit wherein the site is designated may negotiate with the department with respect to any issue relating to the facility except:

(a) The need for the facility;

(b) Any proposal to reduce the powers or duties of the department, the authority or the committee under this chapter or under any permit or license issued for the facility;

(c) Any proposal to reduce the powers or duties of the Commission on Environmental Quality or the Environmental Quality Permit Board or to make less stringent any rule of the Commission on Environmental Quality; or

(d) Any decision of the committee, the authority, the department or the Environmental Protection Council regarding site selection, contractor selection, selection of waste management category or technology pursuant to this chapter.

(2) If the department and the governing body of the local governmental unit have not reached an agreement on all issues by negotiation within six (6) months after site designation, the following issues may be submitted to arbitration:

(a) Compensation to the local governmental unit for substantial economic impacts which are a direct result of the siting and operation of the state commercial hazardous waste management facility and for which adequate compensation is not otherwise provided;

(b) Reimbursement for reasonable costs incurred by the local governmental unit relating to negotiation, mediation and arbitration activities under this chapter;

(c) Matters related to the appearance of the facility;

(d) Operational concerns other than design capacity and regulatory issues;

(e) Traffic flows and patterns which result from the operation of the facility;

(f) Uses of the site where the facility is located after the facility is closed;

(g) Emergency response capabilities, including training and resources; and

(h) Access to facility records and monitoring data.

(3) The Secretary of State shall serve as arbitrator of any issues submitted for arbitration under this section.

SOURCES: Laws, 1990, ch. 506, § 22, eff from and after passage (approved March 31, 1990).

Cross References — Duties of Secretary of State generally, see § 7-3-5.

Right of host community to negotiate in accordance with this section for percentage of gross receipts from facility, see § 17-18-37.

Commission on Environmental Quality, see § 49-2-5.

Environmental Quality Permit Board, see § 49-17-28.

§ 17-18-41. Immunity from personal liability; Attorney General as legal representative of authority and committee.

(1) No member, officer or employee of the department, authority or committee while acting within the scope of their authority shall be subject to any personal liability by reason of any act or omission in connection with the exercise of any power or performance of any duty whether expressed or implied pursuant to this chapter.

(2) Except as otherwise authorized in Section 7-5-39, the Attorney General shall be the legal representative of the authority and the committee and shall provide legal advice and counsel without cost to the authority and the committee.

SOURCES: Laws, 1990, ch. 506, § 23; Laws, 2012, ch. 546, § 9, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning of (2).

Cross References — Attorney General, see § 7-5-1.

§ 17-18-43. Report to Legislature.

The department shall report to the Legislature on January 1 of each year regarding its progress in the activities set out under this chapter. The report shall also include an accounting of the collection and expenditures of all authorized funds and recommendations for any additional legislative authority required in furtherance of the activities under this chapter.

SOURCES: Laws, 1990, ch. 506, § 24, eff from and after passage (approved March 31, 1990).

§ 17-18-45. Elected or appointed officials not to derive any pecuniary benefit.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, as a result of such elected or appointed official's duties under this chapter.

SOURCES: Laws, 1990, ch. 506, § 26, eff from and after passage (approved March 31, 1990).

§ 17-18-47. Governor authorized to suspend siting process; grounds; rescinding suspension.

The Governor, by executive order, may suspend the process of siting a state commercial hazardous waste management facility under this chapter if the Permit Board created in Section 49-17-28, Mississippi Code of 1972, or the United States Environmental Protection Agency issues a Resource Conservation and Recovery Act permit for the operation of a commercial hazardous waste treatment or disposal facility within the state. The Governor, by executive order, may rescind the suspension of the facility siting process if he deems such action to be necessary to site a state commercial hazardous waste management facility within this state and adjust the timetable for the facility siting process accordingly.

SOURCES: Laws, 1990, ch. 506, § 27, eff from and after passage (approved March 31, 1990).

Federal Aspects — The Resource Conservation and Recovery Act is classified at 42 USCS §§ 6901 et seq.

CHAPTER 19

Appropriations to Planning and Development Districts

Sec.
17-19-1. Appropriations to planning and development districts.

§ 17-19-1. Appropriations to planning and development districts.

The board of supervisors of each county and the governing authorities of each municipality in the state are authorized and empowered, in their discretion, to appropriate and pay such sums as they deem necessary and desirable, out of any available funds of the county or municipality which are not required for any other purpose, to the planning and development district in which the county or municipality is located.

SOURCES: Laws, 1981, ch. 349, § 1, eff from and after October 1, 1981.

Cross References — Zoning and planning, generally, see §§ 17-1-1 et seq.

Tax levies and expenditures for local and regional planning commissions, see § 17-1-37.

Establishment of economic development districts by counties, see § 19-5-99.

County finances, generally, see §§ 19-9-1 et seq.

County tax levy for purposes of financing economic development districts, see § 19-9-111.

County budgets, generally, see §§ 19-11-1 et seq.

Municipal appropriations, see § 21-17-7.

Municipal budgets, generally, see §§ 21-35-1 et seq.

Economic development, generally, see §§ 57-1-1 et seq.

ATTORNEY GENERAL OPINIONS

County Board of Supervisors may, in exercise of its discretionary authority, make one time appropriation of such sums as it deems necessary and desirable out of any available funds of county in addition to sums county routinely allocates to district under same statutory authority; county may also place reasonable conditions on use of such funds or otherwise earmark same for some specific purpose which falls within purview of district's authority. Benson, March 14, 1990, A.G. Op. #90-0162.

Planning and Development Districts are not political subdivisions of state or local government, but county governing authorities have discretionary authority to appropriate funds to PDD in which county is located; there is no authority for counties to establish, charter and/or incorporate separate PDD as private corporation under Mississippi Nonprofit Corporation Act or other laws of state. Haque, Oct. 7, 1992, A.G. Op. #92-0714.

Cities and counties cannot use Miss. Code Section 17-19-1 as means to "loan" funding support to Planning and Development Districts (PDDs); cities and counties may make one-time fixed-sum appropriations to PDD which includes "reasonable conditions on use of such funds or otherwise earmark same for some specific purpose or purposes which fall within purview of district's authority"; this cannot be construed as authorizing city to loan money to PPD. McFatter, Apr. 28, 1993, A.G. Op. #93-0250.

A county board of supervisors may make a one time appropriation out of any available funds in an amount deemed appropriate to a planning and development district and may place reasonable conditions on the use of such funds. Beasley, Aug. 22, 1997, A.G. Op. #97-0481.

A board of supervisors may neither invest in a corporation nor obligate the full faith and credit of the county as guarantor of a loan to such corporation. McWilliams, January 9, 1998, A.G. Op. #97-0799.

CHAPTER 21

Finance and Taxation

Article 1. Exemptions 17-21-1
Article 3. Uniform System for Issuance of Negotiable Notes or Certificates of Indebtedness 17-21-51

ARTICLE 1.

EXEMPTIONS.

SEC.
17-21-1. Exemption from ad valorem taxes for real property of nonprofit industrial or economic development organizations.
17-21-3. Termination of exemption; exemption inapplicable to real estate with building thereon.
17-21-5. Exemption from municipal ad valorem tax for certain structures in central business districts, historic preservation districts, business improvement districts, urban renewal districts, redevelopment districts, or on historic landmarks; application for exemption.
17-21-7. Exemption from county ad valorem taxes for certain central business district structures; application for exemption.

§ 17-21-1. Exemption from ad valorem taxes for real property of nonprofit industrial or economic development organizations.

The board of supervisors of any county and the governing authorities of any municipality are authorized and empowered, in their discretion, to grant exemptions from ad valorem taxes on real property:

(a) Which is owned by a nonprofit industrial foundation, corporation or like association organized and operated for the public purpose of promoting economic and industrial development; and

(b) Which is acquired for the sole purpose of making sites available for industrial development; and

(c) When no part of the income thereof inures to the benefit of any private stockholder or individual.

SOURCES: Laws, 1981, ch. 506, § 1, eff from and after May 1, 1981.

§ 17-21-3. Termination of exemption; exemption inapplicable to real estate with building thereon.

The exemptions provided by Sections 17-21-1 and 17-21-3 if granted by the board of supervisors or the governing authorities of any municipality may be withdrawn or terminated as to any subsequent year and any exemptions granted pursuant to Sections 17-21-1 and 17-21-3 on real property which is subsequently leased or sold by the nonprofit industrial foundation, corporation or like association shall be terminated and such real property shall then be assessed for ad valorem taxation as other taxable property. The terms and provisions of Sections 17-21-1 and 17-21-3 shall not apply to any real estate having a building located thereon.

SOURCES: Laws, 1981, ch. 506, § 2, eff from and after May 1, 1981.

§ 17-21-5. Exemption from municipal ad valorem tax for certain structures in central business districts, historic preservation districts, business improvement districts, urban renewal districts, redevelopment districts, or on historic landmarks; application for exemption.

(1) The governing authorities of any municipality of this state may, in their discretion, exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures lying within a designated central business district or historic preservation district or on a historic landmark site, as determined by the municipality, but only in the event such structures shall have been constructed, renovated or improved pursuant to the requirements of an approved project of the municipality for the development of the central business district and/or the preservation and revitalization of historic landmark sites or historic preservation districts. The tax exemption authorized herein may be granted only after written application has been made to the governing authorities of the municipality by any person, firm or corporation claiming the exemption, and an order passed by the governing authorities of such municipality finding that the construction, renovation or improvement of said property is for the promotion of business, commerce or industry in the designated central business district or for the promotion of historic preservation.

(2) The governing authorities of any municipality of this state with a population of twenty-five thousand (25,000) or more according to the latest federal decennial census, may, in their discretion, exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures lying within a designated business improvement district, urban renewal district or redevelopment district, as determined by the municipality, but only in the event such structures shall have been constructed, renovated or improved pursuant to the requirements of an approved project of the municipality for the development of the business improvement district, urban renewal district or redevelopment district. The tax exemption authorized herein may be granted only after written application has been made to the governing authorities of the municipality by any person, firm or corporation claiming the exemption, and an order passed by the governing authorities of such municipality finding that the construction, renovation or improvement of

said property is for the promotion of business, commerce or industry in the designated business improvement district, urban renewal district or redevelopment district.

SOURCES: Laws, 1981, ch. 512, § 1; Laws, 1988, ch. 454; Laws, 1989, ch. 461, § 1; Laws, 1996, ch. 522, § 1, eff from and after July 1, 1996.

ATTORNEY GENERAL OPINIONS

Municipalities cannot grant tax exemptions to new structures, or new renovations of and improvements to existing structures, for periods of less than seven years and then extend exemptions to seven years. O'Reilly-Evans, May 30, 1991, A.G. Op. #91-0376.

Statute authorizing governing authorities to grant exemption from municipal ad valorem taxes for structures and renovations of and improvements to structures in central business district or historic preservation district or on historic landmark site, does not authorize exemption from ad valorem taxes for personal property. O'Reilly-Evans, Nov. 5, 1992, A.G. Op. #92-0833.

If requirements of this section and Section 17-21-7 have been satisfied and a finding to this effect entered into the minutes, the board of supervisors may grant an exemption from county ad valorem taxes, excluding school district taxes, for new structures. Meadows, July 7, 2003, A.G. Op. 03-0317.

With regard to renovations and improvements, Section 17-21-5 allows municipalities to exempt the ad valorem taxes of eligible structures up to the difference between the unimproved value of the structure and the improved value of the structure. Donaldson, Aug. 8, 2005, A.G. Op. 05-0381.

Section 17-5-21 could be applicable to residential improvements within the central business district. Thomas, Oct. 21, 2005, A.G. Op. 05-0510.

§ 17-21-7. Exemption from county ad valorem taxes for certain central business district structures; application for exemption.

The board of supervisors of any county wherein there is located a municipality described in Section 17-21-5 may, in its discretion, exempt from any or all county ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures where an exemption has been granted by the municipality in accordance with the provisions of Section 17-21-5. The exemption from county ad valorem taxes may be granted only upon written application to the board of supervisors of the county by any person, firm or corporation claiming the exemption. A copy of the order of the governing authority of the municipality granting an exemption from municipal ad valorem taxes shall be attached to the application as an exhibit thereto.

SOURCES: Laws, 1981, ch. 512, § 2, eff from and after passage (approved April 20, 1981).

ATTORNEY GENERAL OPINIONS

If requirements of Section 17-21-5 and this section have been satisfied and a finding to this effect entered into the minutes, the board of supervisors may grant an exemption from county ad valorem taxes, excluding school district taxes, for new structures. Meadows, July 7, 2003, A.G. Op. 03-0317.

ARTICLE 3.

UNIFORM SYSTEM FOR ISSUANCE OF NEGOTIABLE NOTES OR CERTIFICATES OF INDEBTEDNESS.

SEC.
17-21-51. Authority to incur debt; limitation on amount of debt.
17-21-53. Procedures; rates of interest; full faith and credit of issuing entity.
17-21-55. Use of proceeds.

§ 17-21-51. Authority to incur debt; limitation on amount of debt.

(1) The board of supervisors of any county and the governing authorities of any municipality (both referred to in this article as "governing authority") are hereby authorized and empowered, in their discretion, to borrow money, pursuant to the provisions of this article, for the following purposes:

(a) To accomplish any purpose for which such governing authorities are otherwise authorized by law to issue bonds, notes or certificates of indebtedness;

(b) To pay costs incurred by governing authorities as a result of a natural disaster. Such costs shall include, but not be limited to, debris removal and disposal, overtime wages paid to public employees, and the repair or replacement of public streets, roads and bridges, storm drains, water and sewer facilities and other public buildings, facilities and equipment. Money borrowed pursuant to this paragraph (b) may also be utilized as matching funds for federal or state disaster relief assistance; and

(c) To purchase motor vehicles for public safety.

(2) The total outstanding indebtedness incurred by a governing authority under this article at any one (1) time shall not exceed the greater of one percent (1%) of the assessed value of all taxable property located within the governing authority according to the last completed assessment for taxation or Two Hundred Fifty Thousand Dollars ($250,000.00) and shall be included in computing the statutory limitation upon indebtedness which may be incurred by such governing authority.

SOURCES: Laws, 1985, ch. 437, § 1; Laws, 1994, ch. 559, § 1; Laws, 2000, ch. 373, § 1; Laws, 2008, ch. 485, § 1, eff from and after July 1, 2008.

Cross References — Uniform system for issuance of county bonds, see § 19-9-1.
General powers of municipalities, see §§ 21-17-1 et seq.
Procedures for issuance of municipal bonds, see §§ 21-33-301 et seq.
Municipal borrowing for special improvements, see §§ 21-41-41 et seq.

Borrowing by junior colleges, see §§ 37-29-101 et seq.

Issuance of notes and certificates of indebtedness by school districts, see §§ 37-59-101 et seq.

Borrowing by drainage districts, see §§ 51-29-63, 51-33-37.

Issuance of bonds for municipal industrial enterprises, see § 57-1-29.

Issuance of bonds for county and municipal harbors, see § 59-7-11.

ATTORNEY GENERAL OPINIONS

Once municipality obtains Certificate of Public Convenience and Necessity, and approval of Executive Director of Department of Economic Development, it may finance proposed enterprise with bonds or, in alternative, with general obligation notes. Douglas, March 2, 1990, A.G. Op. #89-950.

Pursuant to Sections 19-9-1, 43-1-9, 43-1-11, a county is authorized to borrow money in an amount not exceeding the limit imposed by Section 17-21-51 for the purpose of erecting a county building to house the local county Department of Human Services. Trapp, February 15, 1995, A.G. Op. #95-0022.

The board may not mix the provisions of Section 17-21-51 and 65-19-88 to borrow money to pave the roads or streets within a subdivision under the authority and procedures established by Section 65-19-88. Sherard, May 17, 1995, A.G. Op. #95-0209.

Under Section 17-21-51, a City may only borrow up to one percent of the assessed value of all taxable property located in the city at any one time from the Tennessee Valley Authority to be used for the construction of a manufacturing facility, however, there is no authority to exceed the limits in the statute. Tucker, March 29, 1996, A.G. Op. #96-0156.

The necessary funds may not be borrowed by a county board of supervisors with the intent of leasing a premises to the county human resources agency until the loan is amortized. Cockrell, August 13, 1999, A.G. Op. #99-0389.

Unless a city specifically assumed such obligation, a county that issued negotiable notes for road improvements remained solely liable for such negotiable notes, even after the road improvements made using the sums so borrowed were annexed into the city. Clearman, August 6, 1999, A.G. Op. #99-0399.

The ceiling for a county's borrowing authority under this section is the greater amount of either: one percent of the assessed value of all taxable property or $ 250,000.00. Fortier, June 20, 2003, A.G. Op. 03-0259.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 85.

CJS. 64A C.J.S. Municipal Corporations § 2121.

§ 17-21-53. Procedures; rates of interest; full faith and credit of issuing entity.

(1) Before any money is borrowed under the provisions of this article, the governing authority shall adopt a resolution declaring the necessity for such borrowing and specifying the purpose for which the money borrowed is to be expended, the amount to be borrowed, the date or dates of the maturity thereof, and how such indebtedness is to be evidenced. The resolution shall be certified over the signature of the head of the governing authority.

(2) The borrowing shall be evidenced by negotiable notes or certificates of indebtedness of the governing authority which shall be signed by the head and clerk of such governing authority. All such notes or certificates of indebtedness

shall be offered at public sale by the governing authority after not less than ten (10) days' advertising in a newspaper having general circulation within the governing authority. Each sale shall be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the governing authority; however, the rate of interest shall not exceed that now or hereafter authorized in Section 75-17-101, Mississippi Code of 1972. No such notes or certificates of indebtedness shall be issued and sold for less than par and accrued interest. All notes or certificates of indebtedness shall mature in approximately equal installments of principal and interest over a period not to exceed five (5) years from the dates of the issuance thereof. Principal shall be payable annually, and interest shall be payable annually or semiannually; provided, however, that the first payment of principal or interest may be for any period not exceeding one (1) year. Provided, however, if negotiable notes are outstanding from not more than one (1) previous issue authorized under the provisions of this article, then the schedule of payments for a new or supplementary issue may be so adjusted that the schedule of maturities of all notes or series of notes hereunder shall, when combined, mature in approximately equal installments of principal and interest over a period of five (5) years from the date of the new or supplementary issue, or if a lower interest rate will thereby be secured on notes previously issued and outstanding, a portion of the proceeds of any issue authorized hereunder may be used to refund the balance of the indebtedness previously issued under the authority of this article. Such notes or certificates of indebtedness shall be issued in such form and in such denominations as may be determined by the governing authority and may be made payable at the office of any bank or trust company selected by the governing authority. In such case, funds for the payment of principal and interest due thereon shall be provided in the same manner provided by law for the payment of the principal and interest due on bonds issued by the governing authority.

(3) For the prompt payment of notes or certificates of indebtedness at maturity, both principal and interest, the full faith, credit and resources of the issuing entity are pledged. If the issuing entity does not have available funds in an amount sufficient to provide for the payment of principal and interest according to the terms of such notes or certificates of indebtedness, then the governing authority shall annually levy a special tax upon all of its taxable property at a rate the avails of which will be sufficient to provide such payment. Funds derived from any such tax shall be paid into a sinking fund and used exclusively for the payment of principal of and interest on the notes or certificates of indebtedness. Until needed for expenditure, monies in the sinking fund may be invested in the same manner as the governing authority is elsewhere authorized by law to invest surplus funds.

SOURCES: Laws, 1985, ch. 437, § 2, eff from and after July 1, 1985.

Cross References — General powers of municipalities, see §§ 21-17-1 et seq.

Maximum interest rate on general obligation and limited obligation tax bonds, see § 75-17-101.

ATTORNEY GENERAL OPINIONS

County may borrow money for purpose of paying balance due on lease-purchase contract for road equipment. Logan, July 15, 1992, A.G. Op. #92-0459.

This section does not require 10 consecutive days of publication. Accordingly, one or more notices published not less than 10 days prior to the date of the sale in a newspaper having general circulation within the municipality would meet the minimum notice requirements of the statute. Rutledge, May 7, 2004, A.G. Op. 04-0182.

RESEARCH REFERENCES

ALR. When limitations begin to run against actions on public securities or obligations to be paid out of a special or particular fund. 50 A.L.R.2d 271.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 85.

CJS. 64A C.J.S. Municipal Corporations § 2121.

§ 17-21-55. Use of proceeds.

The proceeds of any notes or certificates of indebtedness issued under the provisions of this article shall be placed in a special fund and shall be expended only for the purpose or purposes for which they were issued as shown by the resolution authorizing the issuance thereof. If a balance shall remain of the proceeds of such notes or certificates of indebtedness after the purpose or purposes for which they were issued shall have been accomplished, such balance shall be used to pay such obligations at or before maturity and may be transferred to any sinking fund previously established for the payment thereof.

Proceeds from the sale of notes or certificates of indebtedness not immediately necessary for expenditure shall be invested in the same manner as surplus funds of the governing authority may be invested.

SOURCES: Laws, 1985, ch. 437, § 3, eff from and after July 1, 1985.

Cross References — General powers of municipalities, see §§ 21-17-1 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 85.

CJS. 64 C.J.S. Municipal Corporations § 2121.

CHAPTER 23

Rural Fire Truck Acquisition Assistance Programs

Rural Fire Truck Acquisition Assistance Program 17-23-1
Supplementary Rural Fire Truck Acquisition Assistance Program 17-23-11

RURAL FIRE TRUCK ACQUISITION ASSISTANCE PROGRAM

Sec.
17-23-1. Establishment of Rural Fire Truck Acquisition Assistance Program; Rural Fire Truck Fund; eligibility of counties and municipalities for funds; applications for and expenditure of funds; duties of Department of Insurance with respect to program.

§ 17-23-1. Establishment of Rural Fire Truck Acquisition Assistance Program; Rural Fire Truck Fund; eligibility of counties and municipalities for funds; applications for and expenditure of funds; duties of Department of Insurance with respect to program.

(1) There is established the Rural Fire Truck Acquisition Assistance Program to be administered by the Department of Insurance for the purpose of assisting counties and municipalities in the acquisition of fire trucks.

(2) There is created in the State Treasury a special fund to be designated as the "Rural Fire Truck Fund." The Legislature may appropriate that amount necessary to fulfill the obligations created under this section by the Department of Insurance, from the State General Fund to such special fund, which sum shall be added to the remainder of the money transferred on July 1, 1995, and during the 1996 Regular Session to the Rural Fire Truck Fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund. Unobligated amounts remaining in the Rural Fire Truck Fund, Fund No. 3507, or in Fund No. 3508, or in Fund No. 3504, or in any fund created for funds appropriated or otherwise made available for this program, may be used as matching funds by any county with remaining eligibility as provided herein. It is the intent of the Legislature that the Department of Insurance continue to accept applications from the counties for fire trucks as provided in subsection (3) of this section.

(3)(a) A county that meets the requirements provided herein may receive an amount not to exceed Six Hundred Fifty Thousand Dollars ($650,000.00) as provided in subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of this paragraph, and such amount shall be divided as follows: an amount of not more than Fifty Thousand Dollars ($50,000.00) per fire truck for the first six (6) trucks and not more than Seventy Thousand Dollars ($70,000.00) per fire truck for the seventh, eighth, ninth, tenth and eleventh trucks. Monies distributed under this chapter shall be expended only for the purchase of new fire trucks and such trucks must meet the National Fire Protection Association (NFPA) standards in the 1900 series.

(i) Any county that has not applied for a fire truck under this section is eligible to submit applications for eleven (11) fire trucks as follows: six (6) fire trucks at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of Six Hundred Thirty Thousand Dollars ($630,000.00).

(ii) Any county that has received one (1) fire truck under this section is eligible to submit applications for ten (10) fire trucks as follows: six (6) fire trucks at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of Five Hundred Eighty Thousand Dollars ($580,000.00).

(iii) Any county that has received two (2) fire trucks under this section is eligible to submit an application for nine (9) fire trucks as follows: four (4) fire trucks at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of not more than Five Hundred Thirty Thousand Dollars ($530,000.00).

(iv) Any county that has received three (3) fire trucks under this section is eligible to submit an application for eight (8) fire trucks as follows: three (3) fire trucks at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of not more than Four Hundred Eighty Thousand Dollars ($480,000.00).

(v) Any county that has received four (4) fire trucks under this section is eligible to submit an application for seven (7) fire trucks as follows: two (2) fire trucks at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of not more than Four Hundred Thirty Thousand Dollars ($430,000.00).

(vi) Any county that has received five (5) fire trucks under this section is eligible to submit an application for six (6) fire trucks as follows: one (1) fire truck at not more than Fifty Thousand Dollars ($50,000.00) per truck and five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of not more than Three Hundred Eighty Thousand Dollars ($380,000.00).

(vii) Any county that has received six (6) fire trucks under this section is eligible to submit an application for five (5) fire trucks at not more than Seventy Thousand Dollars ($70,000.00) per truck or a total of not more than Three Hundred Thirty Thousand Dollars ($330,000.00).

(viii) Any county that has received seven (7) fire trucks under this section is eligible to submit an application for four (4) fire trucks at not more than Two Hundred Eighty Thousand Dollars ($280,000.00).

(ix) Any county that has received eight (8) fire trucks under this section is eligible to submit an application for three (3) fire trucks at not more than Two Hundred Ten Thousand Dollars ($210,000.00).

(x) Any county that has received nine (9) fire trucks under this section is eligible to submit an application for two (2) fire trucks at not more than One Hundred Forty Thousand Dollars ($140,000.00).

(xi) Any county that has received ten (10) fire trucks under this section is eligible to submit an application for one (1) fire truck at not more than Seventy Thousand Dollars ($70,000.00).

(b) The board of supervisors of the county shall submit its request for the receipt of monies to the Department of Insurance. A committee composed of the Commissioner of Insurance, the State Fire Coordinator, the Director of the Rating Bureau and the Director of the State Fire Academy shall review the requests by the boards of supervisors and shall determine whether the county or municipality for which the board of supervisors has requested a truck meets the requirements of eligibility under this chapter.

(c) To be eligible to receive monies under this chapter:

(i) A county or municipality must pledge to set aside or dedicate each year as matching funds, for a period not to extend over ten (10) years, local funds in an amount equal to or not less than one-tenth (1/10) of the amount of monies for which it is requesting distribution from the Rural Fire Truck Fund, which pledged monies may be derived from local ad valorem tax authorized by law or from any other funds available to the county or municipality, except for those funds received by municipalities or counties from the Municipal Fire Protection Fund or the County Volunteer Fire Department Fund, as defined in Sections 83-1-37 and 83-1-39.

(ii) A municipality must provide adequate documentation of its contract with the county that requires the municipality to provide fire protection in rural areas. The term “rural areas” means any area within the county located outside the boundaries of an incorporated municipality or any incorporated municipality with a population of two thousand five hundred (2,500) or less.

(d) The Department of Insurance shall maintain an accurate record of all monies distributed to counties and municipalities and the number of fire trucks purchased and the cost for each fire truck, such records to be kept separate from other records of the Department of Insurance; notify counties and municipalities of the Rural Fire Truck Acquisition Assistance Program and the requirements for them to become eligible to participate; adopt and promulgate such rules and regulations as may be necessary and desirable to implement the provisions of this chapter; and file with the Legislature a report detailing how monies made available under this chapter were distributed and spent during the preceding portion of the fiscal year in each county and municipality, the number of fire trucks purchased, the counties and municipalities making such purchases, and the cost of each fire truck purchased.

SOURCES: Laws, 1995, ch. 536, § 1; Laws, 1997, ch. 555, § 1; Laws, 1999, ch. 550, § 1; Laws, 2001, ch. 463, § 1; Laws, 2004, ch. 421, § 1; Laws, 2006, ch. 399, § 1; Laws, 2009, ch. 430, § 1; Laws, 2010, ch. 452, § 1; Laws, 2011, ch. 419, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3)(a)(vi). "Three Hundred Eighty Thousand Dollard" was changed to "Three Hundred Eighty Thousand Dollars." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Amendment Notes — The 2010 amendment rewrote the section authorizing an additional round of fire trucks for counties and municipalities under the rural fire truck acquisition assistance program.

The 2011 amendment rewrote (3)(a).

Cross References — Disposition of monies in County Volunteer Fire Department Fund, see § 83-1-39.

ATTORNEY GENERAL OPINIONS

Section 17-23-1 provides no authorization for counties or municipalities to incur debt. Dale, July 31, 1995, A.G. Op. #95-0406.

The legislative intent of Section 17-23-1 is to assist counties and municipalities in purchasing fire trucks outright and that a lease-purchase would not qualify for state assistance under this program. Dale, July 31, 1995, A.G. Op. #95-0406.

SUPPLEMENTARY RURAL FIRE TRUCK ACQUISITION ASSISTANCE PROGRAM

SEC.
17-23-11. Establishment of supplementary rural fire truck acquisition assistance program; Supplementary Rural Fire Truck Fund; eligibility of counties and municipalities for funds; applications for and expenditure of funds; duties of Department of Insurance with respect to program.

§ 17-23-11. Establishment of supplementary rural fire truck acquisition assistance program; Supplementary Rural Fire Truck Fund; eligibility of counties and municipalities for funds; applications for and expenditure of funds; duties of Department of Insurance with respect to program.

(1) There is established a supplementary rural fire truck acquisition assistance program to be administered by the Department of Insurance for the purpose of assisting counties and municipalities in the acquisition of fire trucks. The supplementary rural fire truck acquisition assistance program is in addition to the rural fire truck acquisition assistance program established in Section 17-23-1 or any other program by which counties and municipalities acquire fire trucks.

(2) There is created in the State Treasury a special fund to be designated as the "Supplementary Rural Fire Truck Fund" which shall consist of funds appropriated or otherwise made available by the Legislature in any manner,

and funds from any other source designated for deposit into such fund. Monies in the fund shall be used for the purpose of assisting counties and municipalities in the acquisition of fire trucks. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

(3)(a) A county that meets the requirements provided herein may receive an amount of not more than Seventy Thousand Dollars ($70,000.00) per fire truck. Monies distributed under this section shall be expended only for the purchase of new fire trucks and such trucks must meet the National Fire Protection Association (NFPA) standards in the 1900 series.

(b) The board of supervisors of the county shall submit its request for the receipt of monies to the Department of Insurance. A committee composed of the Commissioner of Insurance, the State Fire Coordinator, the Director of the Rating Bureau and the Director of the State Fire Academy shall review the requests by the boards of supervisors and shall determine whether the county or municipality for which the board of supervisors has requested a truck meets the requirements of eligibility under this section.

(c) To be eligible to receive monies under this section:

(i) A county or municipality must pledge to set aside or dedicate each year as matching funds, for a period not to extend over ten (10) years, local funds in an amount equal to or not less than one-tenth (1⁄10) of the amount of monies for which it is requesting distribution from the Supplementary Rural Fire Truck Fund, which pledged monies may be derived from local ad valorem tax authorized by law or from any other funds available to the county or municipality, except for those funds received by municipalities or counties from the Municipal Fire Protection Fund or the County Volunteer Fire Department Fund, as defined in Sections 83-1-37 and 83-1-39.

(ii) A municipality must provide adequate documentation of its contract with the county that requires the municipality to provide fire protection in rural areas. The term “rural areas” means any area within the county located outside the boundaries of an incorporated municipality or any incorporated municipality with a population of two thousand five hundred (2,500) or less.

(iii) A county or a municipality, designated by the county, must have exhausted all rounds of applications for fire trucks available to it under Section 17-23-1.

(d) The Department of Insurance shall maintain an accurate record of all monies distributed to counties and municipalities and the number of fire trucks purchased and the cost for each fire truck, such records to be kept separate from other records of the Department of Insurance; notify counties and municipalities of the supplementary rural fire truck acquisition assistance program and the requirements for them to become eligible to participate; adopt and promulgate such rules and regulations as may be necessary and desirable to implement the provisions of this section; and file with the

Legislature a report detailing how monies made available under this chapter were distributed and spent during the preceding portion of the fiscal year in each county and municipality, the number of fire trucks purchased, the counties and municipalities making such purchases and the cost of each fire truck purchased.

SOURCES: Laws, 2004, 3rd Ex Sess, ch. 1, § 152; Laws, 2005, ch. 347, § 2; Laws, 2007, ch. 580, § 25, eff from and after passage (approved Apr. 21, 2007.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3)(d). The word "act" was changed to "section" following "adopt and promulgate such rules and regulations as may be necessary and desirable to implement the provisions of this." The Joint Committee ratified the correction at its May 31, 2006 meeting.

Editor's Note — Laws, 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

CHAPTER 25

General Provisions Relating to Counties and Municipalities

Sec.
17-25-1. County boards of supervisors and municipal governing authorities authorized to allow payment of taxes, fees and other accounts receivable by credit card, charge card, debit card, etc.
17-25-3. Lease or conveyance of property to nonprofit primary health care clinic.
17-25-5. Municipalities and counties to grant examination reciprocity to contractors licensed by another municipality or county; conditions for granting reciprocity.
17-25-7. Prohibition against ordinance restricting woman's right to breast-feed absent state authorization.
17-25-9. Mother may breast-feed her child in any location she is otherwise authorized to be.
17-25-11. County boards of supervisors and municipal governing authorities authorized to allow off-duty law enforcement officers to use public uniforms and weapons in performance of certain private security duties.
17-25-13. Procedure to assist in collection of delinquent water sewer service bills by counties, municipalities and water sewer associations.
17-25-15. Prohibition against enactment of certain new ordinances affecting existing qualified sport shooting ranges; criteria for qualifying for ordinance exemptions.
17-25-17. Reimbursement of steel rebar micro-mills for costs incurred for site preparation, real estate improvements, railroads, roads, utilities and infrastructure related to project.
17-25-19. Prohibition against ordinance authorizing use of automated recording equipment to enforce compliance with or impose penalties for violation of traffic laws.
17-25-21. Authorization to enter into collection agreements to collect cash appearance bonds from certain defendants.
17-25-23. Authorization to enter into agreements with approved business enterprises under certain circumstances; authorization to enter into fee-in-lieu agreements.
17-25-25. Uniform requirements for disposal of personal property belonging to county or municipality.
17-25-27. Authorization to enter into certain agreements with economic development projects.

§ 17-25-1. County boards of supervisors and municipal governing authorities authorized to allow payment of taxes, fees and other accounts receivable by credit card, charge card, debit card, etc.

The board of supervisors of any county and the governing authorities of any municipality may allow the payment of various taxes, fees and other accounts receivable to the county or municipality by credit cards, charge cards, debit cards and other forms of electronic payment, in accordance with policies established by the State Auditor. Any fees or charges associated with the use of such electronic payments shall be assessed to the user of the electronic payment as an additional charge for processing the electronic payment, so that the user will pay the full cost of using the electronic payment.

SOURCES: Laws, 2001, ch. 511, § 2, eff from and after passage (approved Mar. 29, 2001.)

ATTORNEY GENERAL OPINIONS

An Emergency Medical Service District may accept payment by credit card for services rendered so long as they comply with this sectio and the policies established by the State Auditor. Cobler, Sept. 26, 2003, A.G. Op. 03-0508.

§ 17-25-3. Lease or conveyance of property to nonprofit primary health care clinic.

(1) The governing body of any county or municipality, in its discretion, may sell, lease or convey, with or without consideration and upon such terms and conditions as the parties may agree, any land, buildings, fixtures, equipment or other real or personal property belonging to the county or municipality that is determined by the governing body as no longer needed by the county or municipality for governmental purposes, to any nonprofit primary health care clinic, which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code located or to be located in the county for the purpose of assisting any such clinic to provide primary health care services to residents who are employed or temporarily out of work and who do not have health insurance. If such property is sold, leased or conveyed without consideration, the governing body of the county or municipality shall state in its minutes the purpose for which the property shall be used, and such property shall revert to the county or municipality whenever it ceases to be used for that stated purpose.

(2) As used in this section, the term “governing body” means the board of supervisors of any county and the governing authorities of any municipality.

SOURCES: Laws, 2003, ch. 483, § 1; Laws, 2005, ch. 477, § 1, eff from and after July 1, 2005.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code is codified as 26 USCS § 501(c)(3).

§ 17-25-5. Municipalities and counties to grant examination reciprocity to contractors licensed by another municipality or county; conditions for granting reciprocity.

(1) Every municipality and county of the State of Mississippi shall grant competency examination reciprocity to any contractor, including, but not limited to, any electrical, plumbing, heating and air conditioning, water and sewer, roofing or mechanical contractor, who is licensed by another municipality or county of this state without imposing any further competency examination requirements provided:

(a) That the contractor furnishes evidence that he has a license issued on the basis of a competency examination administered in one (1) municipality or county of the State of Mississippi which has an examining board that regularly gives a written examination which has been approved by the State Board of Public Contractors or the Building Officials Association of Mississippi;

(b) That he furnishes evidence that he actually took and passed the written examination which qualified him for such license; however, in lieu thereof, he may furnish evidence that he was issued a license prior to May 1, 1972, and prior to the existence of a written examination by a county or municipality which has an examining board that requires written examination to qualify for a license;

(c) That he has been actively engaged in the business for which he is licensed for two (2) years or more;

(d) That he has held a license for his business for one (1) year or more; and

(e) That he pays the license fee to the municipality or county to which application is made for a license unless he holds a current certificate of responsibility issued by the State Board of Public Contractors, in which case no license fee shall be collected.

(2)(a) Any contractor who operates more than one (1) separate place of business within the state must obtain the appropriate privilege license and pay the privilege license fee for each location if required by the local jurisdiction.

(b) Every jurisdiction in which a contractor does business may impose its own separate bonding requirements on the contractor desiring to do business there.

SOURCES: Laws, 2003, ch. 539, § 7, eff from and after July 1, 2003.

ATTORNEY GENERAL OPINIONS

This section applies to all contractors. Those contractors holding a certificate of responsibility from the State Board of Public Contractors are not required to pay any fees for obtaining such a license. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

As long as the municipality or county in which a contractor obtains a local contractors license uses a qualified examination to determine competency, and the contractor meets the other requirements set out in the statute, all other municipalities and counties in which the contractor wishes to work must grant reciprocity for that examination, although they may require a separate privilege license. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

A local jurisdiction is empowered to require local licensing, even for those contractors holding a certificate of responsibility from the State Board of Public Contractors, but is not mandated to require such a license. If a license is required, no fee shall be imposed. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

The provision of this section specifically authorizing local jurisdictions to require contractors doing business in that locality to impose a bond is not limited solely to those jurisdictions in which the contractor has a separate place of business. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

If the exam administered to contractors prior to the effective date of this section was not approved by either the State Board of Contractors or the Building Officials Association of Mississippi, the section does not permit the “grandfathering” in of such contractors and a city or county may not extend reciprocity to them until they have successfully passed an examination in accordance with the statute. Carrigee, July 30, 2004, A.G. Op. 04-0355.

The "license" referred to in subsection (d) of this section means the license granted pursuant to a competency examination, and not a privilege license held pursuant to § 27-17-457. Barry, Dec. 10, 2004, A.G. Op. 04-0622.

§ 17-25-7. Prohibition against ordinance restricting woman's right to breast-feed absent state authorization.

No county, municipality or other political subdivision shall enact any ordinance restricting a woman's right to breast-feed her child until such time as the state may authorize a county, municipality or other political subdivision to enact such an ordinance.

SOURCES: Laws, 2006, ch. 520, § 2, eff from and after passage (approved Apr. 3, 2006.)

Editor's Note — Laws of 2006, ch. 520, § 1 provides as follows:

"SECTION 1. It is the intent of the Legislature to proclaim that breast milk is life sustaining and the perfect food to ensure optimal growth, development and survival of Mississippi children."

§ 17-25-9. Mother may breast-feed her child in any location she is otherwise authorized to be.

A mother may breast-feed her child in any location, public or private, where the mother is otherwise authorized to be, without respect to whether the mother's breast or any part of it is covered during or incidental to the breast-feeding.

SOURCES: Laws, 2006, ch. 520, § 3, eff from and after passage (approved Apr. 3, 2006.)

Editor's Note — Laws of 2006, ch. 520, § 1 provides as follows:

"SECTION 1. It is the intent of the Legislature to proclaim that breast milk is life sustaining and the perfect food to ensure optimal growth, development and survival of Mississippi children."

§ 17-25-11. County boards of supervisors and municipal governing authorities authorized to allow off-duty law enforcement officers to use public uniforms and weapons in performance of certain private security duties.

(1) Certified law enforcement officers or certified part-time law enforcement officers, as defined in Section 45-6-3, who are employed by a county or municipality may wear the official uniform and may utilize the official firearm issued by the employing jurisdiction while in the performance of private security services in off-duty hours. The governing authority of a municipality must approve of such use of the uniform and official weapon by municipal law enforcement officers by act spread upon the minutes of such board and approved by the chief executive. The sheriff of a county must approve such use

of the uniform and official weapon by deputy sheriffs. Approval shall be on an employee-by-employee basis and not by general order. Any proceedings regarding application or approval and the minutes regarding same shall be a public record.

(2) Each governing board and chief executive or sheriff shall determine before the use of the official uniform and weapon is approved that the proposed employment is not likely to bring disrepute to the employing jurisdiction or its law enforcement agency, the officer at issue, or law enforcement generally, and that the use of the official uniform and weapon in the discharge of the officer's private security endeavor promotes the public interest.

(3) Acts and omissions of an officer in discharge of private security employment shall be deemed to be the acts and omissions of the person or entity employing the officer for such private security services, and not the acts and omissions of the jurisdiction whose uniform and weapon are approved for such private security use. An employer employing the officer for private security services shall hold harmless the jurisdiction by which the officer is employed and fully indemnify the jurisdiction for any expense or loss, including attorney's fees, which results from any action taken against the jurisdiction arising out of the acts or omissions of the officer in discharge of private security services while wearing the official uniform or using the official weapon. Neither the state nor any subdivision thereof shall be liable for acts or omissions of an officer in the discharge of the private security employment duties.

(4) Certified police officers performing private jobs during their off-duty hours are required to notify the appropriate law enforcement agency of the place of employment, the hours to be worked, and the type of employment.

(5) The official uniform and weapon may be worn and utilized only at locations which are within the jurisdiction of the governmental entity whose uniform and weapon are involved.

SOURCES: Laws, 2006, ch. 568, § 1, eff from and after passage (approved Apr. 24, 2006.)

JUDICIAL DECISIONS

1. In general.

In a wrongful death case in which a mother alleged constitutional claims under 42 U.S.C.S. § 1983 against a sheriff, arguing that Miss. Code Annotated § 17-25-11 prohibited the use of sheriff's department equipment, other than the uniform and weapon, by off-duty officers and that the sheriff not only failed to train his deputies that such equipment could not lawfully be used by them for off-duty employment but went so far as to adopt a policy affirmatively allowing such off-duty use, that argument failed. The statute did not clearly prohibit the off-duty use of equipment other than that specifically authorized; thus it was by no means apparent that the sheriff's policy ran afoul of state law. Bradley v. City of Jackson, 590 F. Supp. 2d 817 (S.D. Miss. 2008).

§ 17-25-13. Procedure to assist in collection of delinquent water sewer service bills by counties, municipalities and water sewer associations.

(1) For purposes of this section:

(a) "Water sewer association" means any corporation, whether for profit or not for profit, that provides, distributes, transmits, treats, pumps, or stores raw or potable water to, or for the benefit of, members of the general public or commercial, industrial and other users; and

(b) "Water sewer system" means any entity that provides, distributes, transmits, treats, pumps or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users, including, without limitation, the following entities that perform such activities:

(i) Municipalities;
(ii) Counties; and
(iii) Water sewer associations.

(2)(a) When a person is delinquent on the payment of an undisputed bill for water sewer service provided by a water sewer system within this state, moves into another area of this state, and applies for or receives water from another water sewer system, if the person's former water sewer system establishes that there is no dispute that the delinquent amount is properly due and owed by that particular individual in that amount, the new water sewer system shall refuse to provide water sewer service to the delinquent person until such person provides proof of curing the delinquency.

(b) This subsection shall not apply to a delinquency that has been disputed by the person in writing, unless the delinquency has been reduced to a final judgment of a court of competent jurisdiction.

(3) No provision of this section shall apply to a water sewer system that is regulated by the Mississippi Public Service Commission as a "public utility" as defined in Section 77-3-3.

SOURCES: Laws, 2007, ch. 312, §§ 1 and 2, eff from and after July 1, 2007.

Editor's Note — Laws of 2007, ch. 312, § 2 was combined with this section, as subsection (3), at the instruction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References — Water districts generally, see §§ 19-5-151 et seq.
Municipality powers regarding waterworks, see § 21-27-7.
Public water authorities, see §§ 51-41-1 et seq.

§ 17-25-15. Prohibition against enactment of certain new ordinances affecting existing qualified sport shooting ranges; criteria for qualifying for ordinance exemptions.

(1) An established sport shooting range that is not in violation of a state law or an ordinance of a unit of local government prior to the enactment of a new ordinance of a unit of local government affecting the range may continue

in operation even if, at or after the time of the enactment of the new ordinance, the operation of the sport shooting range is not in compliance with the new ordinance.

In order to qualify for the provisions of this subsection, an established outdoor shooting range must be:

(a) Constructed in a manner not reasonably expected to allow a projectile to cross the boundary of the tract; or

(b) Located on a tract of land of ten (10) acres or more and more than one hundred fifty (150) feet from a residence or occupied building located on another property if a shotgun, air rifle or air pistol, BB gun or bow and arrow is discharged; or

(c) Located on a tract of land of fifty (50) acres or more and more than three hundred (300) feet from a residence or occupied building located on another property if a center fire or rim fire rifle or pistol or a muzzle-loading rifle or pistol of any caliber is discharged.

(2) No new ordinance of a local unit of government shall prohibit an established sport shooting range that is in existence on March 31, 2008, from doing any of the following within the existing geographic boundaries of the sport shooting range:

(a) Repair, remodel or reinforce any building or improvement as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(b) Reconstruct, repair, rebuild or resume the use of a facility or building damaged by fire, collapse, explosion, act of nature or act of war occurring after March 31, 2008;

(c) Expand or enhance its membership or opportunities for public participation;

(d) Reasonably expand or increase facilities or activities.

(3) A person who subsequently acquires title to real property affected by the use of property with an established sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin or impede the use of the range where there has not been a substantial change in the hours of operation of the range, the types of firearms used at the range, or the number of persons using the range.

SOURCES: Laws, 2008, ch. 385, § 1, eff from and after passage (approved Mar. 31, 2008.)

Cross References — Liability exemption for noise pollution by sport-shooting ranges, see § 95-13-1.

§ 17-25-17. Reimbursement of steel rebar micro-mills for costs incurred for site preparation, real estate improvements, railroads, roads, utilities and infrastructure related to project.

(1) As used in this section, "project" means a major steel rebar micro-mill for use in the manufacture of steel rebar with an initial capital investment from private sources of not less than One Hundred Million Dollars ($100,000,000.00) which will create at least one hundred (100) full-time jobs with an average annual salary, excluding benefits which are not subject to Mississippi income taxes, of at least Fifty Thousand Dollars ($50,000.00), and for which construction begins on or before September 15, 2010.

(2) The governing authorities of any municipality or the board of supervisors of any county in which there is to be located a project may provide funds to the enterprise owning or leasing the project in order to reimburse the enterprise for costs it incurs for site preparation, real estate improvements, railroads, roads, utilities and infrastructure related to the project. Reimbursements shall be made with local funds and may include, but not be limited to, the proceeds of bonds.

SOURCES: Laws, 2008, 1st Ex Sess, ch. 42, § 1; Laws, 2010, ch. 520, § 6, eff from and after passage (approved Apr. 14, 2010.)

Amendment Notes — The 2010 amendment substituted "September 15, 2010" for "September 15, 2008" at the end of (1).

§ 17-25-19. Prohibition against ordinance authorizing use of automated recording equipment to enforce compliance with or impose penalties for violation of traffic laws.

(1)(a) Neither the board of supervisors of any county nor the governing authority of any municipality shall adopt, enact or enforce any ordinance authorizing the use of automated recording equipment or system to enforce compliance with traffic signals, traffic speeds or other traffic laws, rules or regulations on any public street, road or highway within this state or to impose or collect any civil or criminal fine, fee or penalty for any such violation.

(b) Any county or municipality using automated recording equipment or system shall remove the equipment or system before October 1, 2009.

(2) For the purposes of this section, the term "automated recording equipment or system" means a camera or optical device installed to work in conjunction with a traffic control signal or radar speed detection equipment or both and designed to record images that depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with instructions of the traffic control signal or the posted speed limit.

SOURCES: Laws, 2009, ch. 416, § 1, eff from and after passage (approved Mar. 20, 2009.)

§ 17-25-21. Authorization to enter into collection agreements to collect cash appearance bonds from certain defendants.

The board of supervisors of any county, in its discretion, and the governing authority of any municipality, in its discretion, may proceed under Section 19-3-41(2), in the case of a county, or under 21-17-1(6), in the case of a municipality, to contract with a private attorney, private collection agent or agency, or the office of the district attorney for the circuit court district in which the county or municipality is located to collect cash appearance bonds from any defendant who has failed to appear in court within ninety (90) days after the court date is set for the defendant, subject to the right of a defendant who is charged with an offense to a trial on the merits of the charge against him, so that the court may authorize the clerk to give notice to any defendant who has failed to appear at the time set that collection fees may be included as part of the court costs.

SOURCES: Laws, 2010, ch. 517, § 2, eff from and after July 1, 2010.

§ 17-25-23. Authorization to enter into agreements with approved business enterprises under certain circumstances; authorization to enter into fee-in-lieu agreements.

(1) As used in this section:

(a) "Enterprise" means an approved business enterprise as defined in Section 57-1-221.

(b) "Project" means a project as defined in Section 57-1-221 with a minimum capital investment in this state of not less than One Hundred Million Dollars ($100,000,000.00).

(2) The board of supervisors of a county or the governing authorities of a municipality may each enter into an agreement with an enterprise that receives a loan for a project under Section 57-1-221, that provides that the county or municipality will not levy any taxes, fees or assessments upon the enterprise other than taxes, fees or assessments that are generally levied upon all taxpayers.

(3) The board of supervisors of a county or the governing authorities of a municipality may each enter into a fee-in-lieu agreement as provided in Section 27-31-104, with an enterprise that receives a loan for a project under Section 57-1-221.

(4) The agreements authorized in this section may be for a period not to exceed twenty (20) years.

SOURCES: Laws, 2011, ch. 301, § 2, eff from and after passage (approved Jan. 10, 2011.)

Cross References — Local governments authorized to accept grants and enter into loans to provide facilities related to projects as defined in § 57-1-221, see § 57-1-221.

§ 17-25-25. Uniform requirements for disposal of personal property belonging to county or municipality.

(1) **General.** The governing authority of a county or municipality may sell or dispose of any personal property belonging to the governing authority when the property has ceased to be used for public purposes or when, in the authority's judgment, a sale thereof would promote the best interest of the governing authority.

(2) **Public sale.** At least ten (10) days before bid opening, the governing authority shall advertise its acceptance of bids by posting notices at three (3) public places located in the county or municipality that the governing authority serves. One of the three (3) notices shall be posted at the governing authority's main office. The governing authority may designate the manner by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids made electronically or bids made by any other method that promotes open competition. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.

(3) **Private sale.** Where the personal property does not exceed One Thousand Dollars ($1,000.00) in value, the governing authority, by a unanimous approval of its members, may sell or dispose of the property at a private sale. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.

(4) If the governing authority finds that the fair market value of the personal property is zero and this finding is entered on the minutes of the authority, then the governing authority may dispose of the personal property in the manner it deems appropriate and in its best interest, but no official or employee of the governing authority shall derive any personal economic benefit from such disposal.

(5) If the personal property may be of use or benefit to any federal agency or authority, another governing authority or state agency of the State of Mississippi, or a state agency or governing authority of another state, it may be disposed of in accordance with Section 31-7-13(m)(vi).

(6) Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

SOURCES: Laws, 2012, ch. 499, § 1, eff from and after July 1, 2012.

§ 17-25-27. Authorization to enter into certain agreements with economic development projects.

(1) As used in this section, "economic development project" means any project in which the State of Mississippi has committed state or federal

program funds to incentivize a company to locate or expand a business in the state and create or maintain jobs within the state.

(2) The board of supervisors of a county or the governing authorities of a municipality may enter into agreements with an economic development project that are binding on future boards of supervisors of the county or governing authorities of the municipality:

(a) To provide water, sewer and other county or municipal services; and/or

(b) Providing that the board of supervisors or governing authorities will agree in advance to approve any request for exemption from ad valorem taxes in the manner provided by law and that any such exemption shall be for a period of ten (10) years.

(3) The agreements authorized under this section may be for a period not to exceed twenty (20) years.

SOURCES: Laws, 2012, ch. 379, § 1, eff from and after passage (approved Apr. 17, 2012.)

CHAPTER 27

Municipal Historical Hamlet Act

Sec.
17-27-1. Short title; purpose.
17-27-3. Legislative findings.
17-27-5. Municipal historical hamlet defined; powers.
17-27-7. Petition for creation of municipal historical hamlet; requirements.
17-27-9. Effective date of existence of municipal historical hamlet; prohibition against formation of municipal historical hamlet for certain purposes.
17-27-11. Form of name of municipal historical hamlet.

§ 17-27-1. Short title; purpose.

This chapter shall be known as the "Municipal Historical Hamlet Act," and it shall serve the purpose of having historical small communities organize community activities that will positively influence the infrastructure of such communities.

SOURCES: Laws, 2009, ch. 380, § 1, eff from and after passage (approved Mar. 17, 2009.)

§ 17-27-3. Legislative findings.

The Legislature finds the following:

(a) Population growth as well as development in historical communities result in new and increased demands for public facilities and services that promote the public peace, health, safety, and general welfare;

(b) The residents and property owners in these communities should have reasonable methods available so they can provide these public facilities and services; and

(c) The ability of residents and property owners in historical communities to propose the establishment of municipal historical hamlets is a method to fulfill the demands for these much needed public facilities and services.

SOURCES: Laws, 2009, ch. 380, § 2, eff from and after passage (approved Mar. 17, 2009.)

§ 17-27-5. Municipal historical hamlet defined; powers.

(1) For purposes of this chapter, the term "municipal historical hamlet" means any former city, town or village with a current population of less than six hundred (600) inhabitants that lost its charter before 1945.

(2) After the creation of a municipal historical hamlet, as prescribed in Sections 17-27-7 through 17-27-11, the powers of such historical hamlet shall be as follows:

(a) To designate the county seat of government located at a county courthouse within the jurisdiction where the hamlet is located as the municipal historical hamlet meeting place;

(b) To be recognized for historical districts within a municipal historical hamlet; and

(c) To work with a planning and development district in promoting economic, community and human resources within a municipal historical hamlet and to apply for any type of grant to improve the infrastructure of such hamlet, including any small municipalities grant programs authorized, such as in Sections 21-17-1 and 21-27-23.

(3) The board of supervisors of the county in which a municipal historical hamlet is located, acting for and on the behalf of the hamlet, may exercise any powers authorized under this section.

(4) Taxes or fees shall not be imposed by or against any municipal historical hamlet for any general or special purpose.

(5) A municipal historical hamlet shall not be considered as one (1) of the classes of municipal corporations which are prescribed in Section 21-1-1 but shall be considered an unincorporated area zoned for consideration of issues affecting the designated community through any application or process recognizing the area specifically within any county or counties.

SOURCES: Laws, 2009, ch. 380, § 3; Laws, 2011, ch. 390, § 1, eff from and after passage (approved Mar. 11, 2011.)

Amendment Notes — The 2011 amendment added (3).

§ 17-27-7. Petition for creation of municipal historical hamlet; requirements.

Any inhabitant or inhabitants of any former city, town or village that meets the criteria of a municipal historical hamlet, as defined in Section 17-27-5, and desires to create a municipal historical hamlet, shall prepare a petition and file such petition with the chancery clerk of the county in which such proposed historical hamlet is located or, if the proposed municipal historical hamlet is located in more than one (1) county, the chancery clerk of both counties. The petition shall meet the following requirements:

(a) It shall accurately reference the territory proposed to be a municipal historical hamlet as the former municipal corporation and the date on which that charter was suspended, with the last date of such suspension being before 1945;

(b) It shall set forth the name of the hamlet which is desired;

(c) It shall set forth the number of inhabitants of such territory as per the most recent decennial census; and

(d) It shall be sworn to by one or more of the petitioners and placed on file in the land records of the chancery clerk.

SOURCES: Laws, 2009, ch. 380, § 4, eff from and after passage (approved Mar. 17, 2009.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph. The words "any inhabitant or inhabitants " was deleted preceding "shall prepare a petition and file such petition with the chancery clerk." The Joint Committee ratified the correction at its July 13, 2009, meeting.

§ 17-27-9. Effective date of existence of municipal historical hamlet; prohibition against formation of municipal historical hamlet for certain purposes.

(1) After the filing of the petition for the creation of a municipal historical hamlet, as prescribed in Section 17-27-7, a certified copy of the petition shall be delivered to the president of the board of supervisors in the county or counties where the hamlet is located and shall be spread upon the minutes for recognition as a hamlet, and at that time the existence of the historical hamlet shall become effective.

(2) No municipal historical hamlet shall be recognized that lies in whole or in part in any incorporated area and shall not be considered a municipal corporation under Section 21-1-1 in order to defeat or defend against the inclusion within the boundaries of any municipal corporation.

SOURCES: Laws, 2009, ch. 380, § 5, eff from and after passage (approved Mar. 17, 2009.)

§ 17-27-11. Form of name of municipal historical hamlet.

The name of a created municipal historical hamlet shall either be "The Municipal Historical Hamlet of ____________," "The Hamlet of ____________ " or "The Historical Hamlet of ____________." The blank shall be filled in with the name by which such hamlet has been legally designated and shall be placed in the records of the Secretary of State.

SOURCES: Laws, 2009, ch. 380, § 6, eff from and after passage (approved Mar. 17, 2009.)

CHAPTER 29

Mississippi Entertainment District Act

Sec.
17-29-1. Short title.
17-29-3. Definitions.
17-29-5. Establishment of entertainment districts by governing authorities of municipalities and counties; application for approval of district to State Tax Commission.
17-29-7. Use of accelerated state income tax depreciation deduction by qualifying business authorized; exceptions.
17-29-9. Qualifying businesses electing to use accelerated depreciation deduction to impose ticket fee on entertainment services provided by the business; collection of fees; enforcement.

§ 17-29-1. Short title.

This chapter may be cited as the "Mississippi Entertainment District Act."

SOURCES: Laws, 2009, ch. 501, § 1, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 17-29-3. Definitions.

For the purposes of this chapter:

(a) "Business" means any corporation, limited liability company, partnership, or sole proprietorship.

(b) "Entertainment district" or "district" means an area designated by a county or municipality in which entertainment services are centered.

(c) "Entertainment services" means any sale of tickets, passes, or admissions to an event, including, but not limited to, a sporting event, athletic event, festival, concert, or theater show.

(d) "Entertainment facility" means any structure that provides entertainment services and shall include, but not be limited to, a theater, amphitheater, golf course, museum, zoo, automobile racetrack, arena, stadium, or similar venue.

(e) "Municipality" means any county or incorporated city, municipality, town or village in the state.

(f) "Ticket fee" means an additional fee added on to the price of entertainment services sold.

(g) "Qualifying business" means any business within an entertainment district that constructs and operates an entertainment facility that is established or remodeled after July 1, 2009, elects to participate in the accelerated depreciation deduction authorized by Section 17-29-7, and is approved to do so in accordance with the rules and regulations adopted by the State Tax Commission.

SOURCES: Laws, 2009, ch. 501, § 2, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Certain tourism attractions located within entertainment district are included within definition of "tourism project" for purposes of tourism project sales tax incentive program, see § 57-26-1.

§ 17-29-5. Establishment of entertainment districts by governing authorities of municipalities and counties; application for approval of district to State Tax Commission.

The governing authorities of a municipality, by majority vote, may establish entertainment districts within its boundaries and shall designate the geographic area or areas in which a district shall be established. Following establishment of a district, application for approval of the entertainment district shall be made by the establishing municipality to the State Tax Commission which shall be required to approve the establishment and designation of the district within such municipality in accordance with the rules and regulations adopted by the State Tax Commission.

SOURCES: Laws, 2009, ch. 501, § 3, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 17-29-7. Use of accelerated state income tax depreciation deduction by qualifying business authorized; exceptions.

(1) Except as otherwise provided by this section, qualifying businesses which construct or renovate an entertainment facility or facilities within an entertainment district after July 1, 2009, may use an accelerated state income tax depreciation deduction. The accelerated depreciation deduction shall be computed by accelerating depreciation period required by Title 35, Part III, Subpart 5, Chapter 4, Mississippi Administrative Code, to a five-year depreciation period.

(2) Gaming establishments licensed under the Mississippi Gaming Control Act shall not be eligible for the accelerated depreciation deduction authorized under this section. Licensees under the Charitable Bingo Law shall not be eligible for the accelerated depreciation deduction authorized under this section, and the accelerated depreciation deduction shall not apply to any

property utilized in the conduct of charitable bingo under the Charitable Bingo Law.

SOURCES: Laws, 2009, ch. 501, § 4, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Charitable Bingo Law, see §§ 97-33-50 et seq.

§ 17-29-9. Qualifying businesses electing to use accelerated depreciation deduction to impose ticket fee on entertainment services provided by the business; collection of fees; enforcement.

(1) Any qualifying business that elects to utilize the accelerated depreciation deduction provided in Section 17-29-7 shall impose a ticket fee on any entertainment services provided by the qualifying business in the amount of Two Dollars ($2.00) per ticket, pass or admission, as applicable, in addition to the tax levied by Section 27-65-22.

(2) The fee shall be collected by and paid to the Mississippi State Tax Commission on a form prescribed by the State Tax Commission in the manner that state sales taxes are collected and paid; and full enforcement provisions and all other provisions of Chapter 65, Title 27, Mississippi Code of 1972, shall apply as necessary to the implementation and administration of this section. The revenue collected by the State Tax Commission pursuant to this section shall be deposited into the State General Fund.

(3) The ticket fee shall be charged and collected for a period of five (5) years from the date a qualifying business elects to utilize the accelerated depreciation deduction authorized in Section 17-29-7.

SOURCES: Laws, 2009, ch. 501, § 5, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

TITLE 19

COUNTIES AND COUNTY OFFICERS

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CHAPTER 1

County Boundaries

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§ 19-1-1. Adams County.

Adams County is bounded by beginning on the Mississippi River, bounding on Jefferson County, at the upper side of Rose's old settlement, and thence easterly in a direct line to Strover's mound, near Fairchild's creek; thence up the south branch of said creek, with its meanderings, to a place once known as Griffin's stillhouse, and afterward George Selser's springs; thence in a direct line to the northeast corner of what was once Edmond Andrews' cotton gin; thence in a due east course to the basis meridian line; thence south with said line, on Jefferson and Franklin Counties, to the River Homochitto; thence with said river, bounding on Wilkinson County (to leave Tansy Island in Wilkinson County), to the Mississippi River; and thence northerly along the same to the place of beginning. The county site is Natchez.

SOURCES: Codes, 1871, § 20; 1880, § 24; 1892, § 348; 1906, § 411; Hemingway's 1917, § 3825; 1930, § 3888; 1942, § 3023; Laws, Apr. 2, 1799.

Cross References — Resurveying county boundaries, see § 19-27-13.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 35-37, 40-56, 62.

CJS. 20 C.J.S., Counties §§ 22-47.

§ 19-1-3. Alcorn County.

Alcorn County is bounded by beginning on the boundary line between the States of Mississippi and Tennessee, where the line between ranges four and five, east, intersects the same; thence east with said state line to a point two miles east of the line between ranges eight and nine, east; thence south on section lines to the southeast corner of section five, township four, range nine, east; thence west on section lines to the southwest corner of section two, township four, range five, east; thence north on section lines to the line between townships two and three; thence west on said township line to the southwest corner of township two, range five, east; thence north on the line between ranges four and five, east, to the beginning. The county site is Corinth.

SOURCES: Codes, 1871, § 21; 1880, § 25; 1892, § 349; 1906, § 412; Hemingway's 1917, § 3826; 1930, § 3889; 1942, § 3024; Laws, Apr. 15, 1870.

§ 19-1-5. Amite County.

Amite County is bounded by beginning on the Homochitto River at the mouth of Foster's creek; thence up said river, with its meanderings, to the line between townships four and five; thence with said township line east to its intersection with the line between ranges six and seven, east; thence south with said range line to the boundary of Louisiana; thence west on the boundary line to the line between ranges one and two, east; thence north on the range line to Foster's creek; thence down said creek to the place of beginning. The county site is Liberty.

SOURCES: Codes, 1871, § 22; 1880, § 26; 1892, § 350; 1906, § 413; Hemingway's 1917, § 3827; 1930, § 3890; 1942, § 3025; Laws, Feb. 24, 1809.

§ 19-1-7. Attala County.

Attala County is bounded by beginning at the point on Big Black River where the line between townships sixteen and seventeen crosses the same; thence east with said township line to the line between ranges nine and ten, east; thence south to the line between townships twelve and thirteen, being the northeast corner of Leake County; thence west with the line between townships twelve and thirteen to the line between ranges five and six, east; thence south with said range line to the center of township twelve, range five, east; thence due west with sectional lines to the Choctaw boundary; thence southerly on said boundary line one mile; thence west on section lines to Big Black River; thence up said river, with its meanderings, to the beginning. The county site is Kosciusko.

SOURCES: Codes, 1857, ch. 2, art 61; 1871, § 23; 1880, § 27; 1892, § 351; 1906, § 414; Hemingway's 1917, § 3828; 1930, § 3891; 1942, § 3026; Laws, Dec. 23, 1833.

§ 19-1-9. Benton County.

Benton County is bounded by beginning at a point on the boundary between the States of Mississippi and Tennessee where it is intersected by the line between ranges one and two, west; thence south on section lines to the southwest corner of section six, township three, range one, west; thence due east on section lines to the southeast corner of section four, township three, range one, west; thence due south on section lines to the southwest corner of section three, township six, range one, west; thence east to the basis meridian; thence north on said meridian line to the line between townships five and six; thence due east on said township line to the southeast corner of section thirty-three, in township five, range two, east; thence due north on section lines to the southeast corner of section sixteen, in township three, range two, east; thence due east on section lines to the southeast corner of section thirteen, township three, range two, east; thence due north on range line between ranges two and three to the southeast corner of township two, range two, east; thence due east on township lines to the southeast corner of section thirty-one, township two, range three, east; thence due north on section lines to the Tennessee state line; thence due west on said state line to the beginning. The county site is Ashland.

SOURCES: Codes, 1871, § 24; 1880, § 28; 1892, § 352; 1906, § 415; Hemingway's 1917, § 3829; 1930, § 3892; 1942, § 3027; Laws, July 15, 1870.

§ 19-1-11. Bolivar County.

Bolivar County is bounded by beginning on the Mississippi River, at the center of township twenty-six, north, range seven, west; thence east with said line to the line between ranges four and five, west; thence south on said line to the line between townships twenty and twenty-one; thence west on said township line to the range line between ranges five and six, west; thence south to the township line between townships nineteen and twenty; thence west to the Mississippi River; thence up said river to the beginning. The county sites are Rosedale and Cleveland.

SOURCES: Codes, 1857, ch. 2, art 80; 1871, § 25; 1880, § 29; 1892, § 353; 1906, § 416; Hemingway's 1917, § 3830; 1930, § 3893; 1942, § 3028; Laws, Feb. 9, 1836.

§ 19-1-13. Calhoun County.

Calhoun County is bounded by beginning at the northwest corner of section three, township eleven, range three, west; thence east on the township line to the northeast corner of township eleven, range one, west; thence south on the range line to the southeast corner of said township; thence east to the northeast corner of township twelve, range one, east; thence south to the northeast corner of township fifteen, range one, east; thence west to the northwest corner of section three, township fifteen, range one, east; thence south to the southeast corner of township twenty-two, range ten, east; thence west eighteen miles to the southwest corner of township twenty-two, range eight, east; thence north to the beginning. The county site is Pittsboro.

SOURCES: Codes, 1871, § 26; 1880, § 30; 1892, § 354; 1906, § 417; Hemingway's 1917, § 3831; 1930, § 3894; 1942, § 3029; Laws, Mar. 8, 1852.

§ 19-1-15. Carroll County.

Carroll County is bounded by beginning at the middle of the Yalobusha River at the point at which a line drawn from the center of township twenty-one, range two, east, would intersect said river; thence east on section lines to the northwest corner of section twenty-one, township twenty-one, range five, east; thence south to the northwest corner of section twenty-one, township eighteen, range five, east; thence east to the northwest corner of section nineteen, township eighteen, range six, east; thence south one mile to the section line; thence east to the northeast corner of section twenty-seven, township eighteen, range six, east; thence south to the southwest corner of section thirty-five, township seventeen, range six, east; thence west to Big Black River; thence with the middle of said river to the northeast corner of Holmes County; thence with the boundary line of Holmes County to the point at which said line is crossed by the line between sections fourteen and fifteen, township seventeen, range one, east; thence north with said section line to the southwest corner of section fourteen, township eighteen, range one, east; thence east to the range line between ranges one and two, east; thence north to the northwest corner of township eighteen, range two, east; thence east to the southeast corner of section thirty-two, township nineteen, range two, east; thence north to the northeast corner of section seventeen, township twenty, range two, east; thence west by section lines to the middle of the Yalobusha River; thence north with the middle of said river to the beginning. The county sites are Carrollton and Vaiden.

SOURCES: Codes, 1857, ch. 2, art 55; 1871, § 27; 1880, § 31; § 1892, § 355; 1906, § 418; Hemingway's 1917, § 3832; 1930, § 3895; 1942, § 3030; Laws, Dec. 23, 1833.

§ 19-1-17. Chickasaw County.

Chickasaw County is bounded by beginning at the northwest corner of township twelve, range two, east; thence east to the northeast corner of township twelve, range five, east; thence south on the range line to the northeast corner of township fifteen, range five, east; thence west on the township line to the range line between ranges three and four, east; thence south to the southeast corner of section twenty-four, township fifteen, range three, east; thence west to the northwest corner of section thirty of same township; thence south to the southwest corner of same section; thence west to the northeast corner of section thirty-six, township twenty-two, range ten, east; thence north to the northeast corner of township twenty-two, range ten, east; thence east to the southeast corner of township fourteen, range one, east; thence north to the beginning. The county sites are Houston and Okolona.

SOURCES: Codes, 1857, ch. 2, art 72; 1871, § 28; 1880, § 32; 1892, § 356; 1906, § 419; Hemingway's 1917, § 3833; 1930, § 3896; 1942, § 3031; Laws, Feb. 9, 1836.

§ 19-1-19. Choctaw County.

Choctaw County is bounded by beginning at the northeast corner of section twelve, township nineteen, range eleven, east; thence west on section lines to a point where said section line crosses Big Black River; thence down said river by the middle of the stream to where it crosses the line between sections fifteen and sixteen, township eighteen, range eight, east; thence south on said section line to the southwest corner of section thirty-four, township seventeen, range eight, east; thence east on the township line between townships sixteen and seventeen to the northeast corner of township sixteen, range nine, east; thence south on the range line between ranges nine and ten to the southwest corner of township fifteen, range ten, east; thence east on the township line between townships fourteen and fifteen to the southeast corner of township fifteen, range ten, east; thence north on the range line between ranges ten and eleven to the northeast corner of said township fifteen, range ten; thence east to the southeast corner of township sixteen, range eleven, east; thence north on the range line to the northeast corner of said township sixteen, range eleven, east; thence east to the southwest corner of Oktibbeha County-southwest corner of township seventeen, range twelve, east; thence north with the boundary line of Oktibbeha county to the beginning. The county site is Ackerman.

SOURCES: Codes, 1857, ch. 2, art 52; 1871, § 29; 1880, § 33; 1892, § 357; 1906, § 420; Hemingway's 1917, § 3834; 1930, § 3897; 1942, § 3032; Laws, Dec. 23, 1833.

§ 19-1-21. Claiborne County.

Claiborne County is bounded by beginning at the junction of the Little Boguesha with the Mississippi River, nearly opposite to Big Black Island, on the southwestern boundary of Warren County; thence with Little Boguesha to the Big Boguesha; thence with Big Boguesha to the Big Black River; thence up said river, with its meanderings, to the old Choctaw boundary, in township fourteen, range five, east; thence south with said Choctaw boundary line to the township line between townships nine and ten, the same being the northeast corner of Jefferson County; and the boundary line between Claiborne and Jefferson Counties is as follows: beginning on the Mississippi River at a point opposite the lower end of the Petit Gulf hills, running thence a direct course to the most northern point of the tract of land formerly known as "Robert Trimble's," on Tabor's creek of Bayou Pierre; continuing the same course until it shall intersect the South Fork of Bayou Pierre, at Elijah L. Clarke's wagon ford on said creek; thence up said creek to the township line between townships nine and ten; thence along said township line east to the old Choctaw boundary line; and the western boundary line of Claiborne County is the western boundary of the state between said two points of beginning on the Mississippi River. The county site is Port Gibson.

SOURCES: Codes, 1871, § 30; 1880, § 34; 1892, § 358; 1906, § 421; Hemingway's 1917, § 3835; 1930, § 3898; 1942, § 3033; Laws, Jan. 27, 1802.

§ 19-1-23. Clarke County.

Clarke County is bounded by beginning on the Choctaw boundary line, where the range line between ranges thirteen and fourteen, east, of the Choctaw meridian extended strikes the same; thence eastwardly with said Choctaw boundary line to the northwest corner of the Hiawanee reserve; thence direct to the northeast corner of said Hiawanee reserve; thence along the said Choctaw boundary line to the Alabama state line; thence nearly due north along said state line to the point where the township line between townships four and five strikes the same; thence west along said township line to the northwest corner of township four, range fourteen, east; thence due south along the range line to the point of beginning. The county site is Quitman.

SOURCES: Codes, 1857, ch. 2, art 49; 1871, § 31; 1880, § 35; 1892, § 359; 1906, § 422; Hemingway's 1917, § 3836; 1930, § 3899; 1942, § 3034; Laws, Dec. 23, 1833.

§ 19-1-25. Clay County.

Clay County is bounded by beginning at a point where the section line running east from the northeast corner of section twenty-four, township sixteen, range seven, east intersects the Tombigbee River; thence running due west to the northwest corner of section nineteen, township sixteen, range six, east; thence due north to the northeast corner of township fifteen, range five, east; thence west to the northwest corner of township fifteen, range four, east; thence south to the southwest corner of section nineteen in said township and range (township fifteen, range four, east), thence west to the northwest corner of section thirty, township fifteen, range three, east, and running south along the line between ranges two and three, east, to the intersection of said range line with the old Chicasaw boundary line; thence north, 77.03 east, on said line to the northwest corner of fractional section thirty-five, township twenty-one, range twelve, east; thence south on the sectional line to the southwest corner of section twenty-six, township twenty, range twelve, east; thence to the northeast corner of Oktibbeha County; thence south along the boundary of Oktibbeha County to the southwest corner of section eighteen, township nineteen, range sixteen, east; thence east to the southwest corner of section fourteen, township nineteen, range sixteen, east, to Catalpa creek; thence down the meanderings of said creek to its junction with Tibbie creek; thence down the meanderings of Tibbie creek to its junction with the Tombigbee River at the southeast corner of section thirty-five, township seventeen, range seven, east; thence following the meanderings of said river to the beginning. The county site is West Point.

SOURCES: Codes, 1871, § 33; 1880, § 36; 1892, § 360; 1906, § 423; Hemingway's 1917, § 3837; 1930, § 3900; 1942, § 3035; Laws, May 12, 1871.

§ 19-1-27. Coahoma County.

Coahoma County is bounded by beginning where the Choctaw and Chickasaw boundary intersects the Mississippi River; thence southerly with said boundary line to its intersection with the line between townships twenty-nine and thirty; thence south with the section lines to the northeast corner of section thirty-three, township twenty-eight, range two west; thence west on section lines to the range line between ranges two and three west; thence south on the range line to the southwest corner of township twenty-five, range two west; thence west with the line between townships twenty-four and twenty-five to the southwest corner of township twenty-five, range four west; thence north on the line between ranges four and five west to the northeast corner of section twenty-four, township twenty-six, range five west; thence west on sectional lines to the Mississippi River; thence up said river to the beginning. The county site is Clarksdale.

SOURCES: Codes, 1857, ch. 2, art 79; 1871, § 32; 1880, § 37; 1892, § 361; 1906, § 424; Hemingway's 1917, § 3838; 1930, § 3901; 1942, § 3036; Laws, Feb. 9, 1836; Laws, 1976, ch. 316, eff from and after passage (approved March 31, 1976).

§ 19-1-29. Copiah County.

Copiah County is bounded by beginning where the line between townships two and three intersects the old Choctaw boundary; thence east on said township line to Pearl River; thence down said river, with its meanderings, to the old Choctaw boundary; thence southwesterly with said boundary line to the line between townships eight and nine; thence west with said township line to the northeast corner of section three, township eight, range eight, east; thence south to the southeast corner of said section; thence west to the southwest corner of section four of said township; thence north to the line between townships eight and nine; thence west to the Choctaw boundary line; thence northerly with said boundary line to the beginning. The county site is Hazlehurst.

SOURCES: Codes, 1857, ch. 2, art 24; 1871, § 34; 1880, § 38; 1892, § 362; 1906, § 425; Hemingway's 1917, § 3839; 1930, § 3902; 1942, § 3037; Laws, Jan. 21, 1823.

§ 19-1-31. Covington County.

Covington County is bounded as follows: Beginning at the southwest corner of section thirty-five, township six, north, range sixteen west; thence due north along section lines to Bowie creek; thence northwestwardly up the middle or thread of said creek to where the same crosses the line between townships seven and eight; thence due west along said township line to the line between ranges seventeen and eighteen, west; thence due north on said range line to the old Choctaw boundary line; thence north of east with said boundary line to the northeast corner of section thirty-three, township ten, range fourteen, west; thence south on section lines to the township line between townships five and six; thence west with said township line to the beginning. The county site is Collins.

SOURCES: Codes, 1871, § 35; 1880, § 39; 1892, § 363; 1906, § 426; Hemingway's 1917, § 3840; 1930, § 3903; 1942, § 3038; Laws, Jan. 5, 1819.

§ 19-1-33. De Soto County.

De Soto County is bounded by beginning where the northern boundary of the state intersects the Mississippi River; thence east with said boundary line to the center of range five, west; thence south with the section lines through the center of said range to the southeast corner of section thirty-two, township three, range five, west; thence west on the township line between townships three and four to where said line intersects Coldwater River; thence down, with the meanderings of said river, to where the range line between ranges nine and ten intersects said river; thence north along said range line to the lines between townships two and three, range nine, west; thence west with said township line to the Mississippi River; thence up said river to the beginning. The county site is Hernando.

SOURCES: Codes, 1857, ch. 2, art 75; 1871, § 36; 1880, § 40; 1892, § 364; 1906, § 427; Hemingway's 1917, § 3841; 1930, § 3904; 1942, § 3039; Laws, Feb. 9, 1836.

§ 19-1-35. Forrest County.

Forrest County is bounded as follows: Beginning at the northeast corner of township five, north, of range twelve, west, of St. Stephen's meridian, then run south along the line dividing ranges eleven and twelve to the southeast corner of township one, south, of range twelve, west; then run west along the line of Stone County to the southwest corner of township one, south, of range thirteen, west; then run north along the lines of Pearl River and Lamar Counties to the southeast corner of township five, north, of range fourteen, west; then run west along the line of Lamar County to the southwest corner of said last named township; then run north along the line of Lamar County to the northwest corner of said last named township; then run east along the lines of Covington and Jones Counties to the point of beginning. The county site is Hattiesburg.

SOURCES: Codes, Hemingway's 1917, § 3842; 1930, § 3205; 1942, § 3040; Laws, 1906, ch. 165.

§ 19-1-37. Franklin County.

Franklin County is bounded by beginning at the northwest corner of township seven, range one, east; thence east with the township line to a point one mile east of the range line between ranges five and six, east; thence south on the section line, one mile from said range line, to the township line between townships four and five; thence west with said township line to the Homochitto River; thence down, with the meanderings of said river, to the basis meridian line; thence north on said meridian line to the beginning. The county site is Meadville.

SOURCES: Codes, 1871, § 37; 1880, § 41; 1892, § 365; 1906, § 428; Hemingway's 1917, § 3844; 1930, § 3906; 1942, 3041; Laws, Dec. 21, 1809.

§ 19-1-39. George County.

George County is bounded as follows, to wit: Beginning at the northwest corner of section six, township one, south, range eight, west; and from thence running south along the line of Perry County to a point dividing township one, south and township two, south; thence running west along said township line to the northwest corner of section three, township two, south, range nine, west; thence south along the lines of Stone County to a point dividing township three, south, and township four, south, and from thence run east along the lines dividing township three, south, and township four, south, to the Mississippi and Alabama state line; thence run north along said state line to the thirty-first parallel of latitude which is the same as a point dividing township one, south, and township one, north; thence run west along said township line back to the place of beginning. The county site is Lucedale.

SOURCES: Codes, Hemingway's 1917, § 3845; 1930, § 3907; 1942, § 3042; Laws, 1910, ch. 248.

§ 19-1-41. Greene County.

Greene County is bounded by beginning at the northwest corner of township five, north, range eight, west; thence east on the township line to the intersection of the state line with Alabama; thence southerly with said state line to the thirty-first parallel of latitude which is the township line between townships one north and one south; thence west with said township line to the line between ranges eight and nine, west; thence north with said range line to the beginning. The county site is Leakesville.

SOURCES: Codes, 1871, § 38; 1880, § 42; 1892, § 366; 1906, § 429; Hemingway's 1917, § 3847; 1930, § 3908; 1942, § 3043; Laws, Dec. 9, 1811.

§ 19-1-43. Grenada County.

Grenada County is bounded by beginning at the northwest corner of township twenty-two, range two, east; thence east with the township line to the southwest corner of section thirty-four, in township twenty-three, range three, east; thence north with the section lines to the northwest corner of said section; thence east with the section lines to the line between ranges three and four, east; thence north with said range line to the township line between townships twenty-three and twenty-four; thence east with said township line to the northwest corner of section three, in township twenty-three, range five, east; thence south to the southwest corner of section ten, in the last named township; thence east with the section line to the range line between ranges seven and eight, east; thence south with said range line to the southeast corner of section thirteen, township twenty-one, range seven, east; thence west with the section lines to the southwest corner of section eighteen, township twenty-one, north, range two, east; thence north on the range line, between ranges one and two, east, to the beginning. The county site is Grenada.

SOURCES: Codes, 1871, § 39; 1880, § 43; 1892, § 367; 1906, § 430; Hemingway's 1917, § 3848; 1930, § 3909; 1942, § 3044; Laws, May 9, 1870.

§ 19-1-45. Hancock County.

Hancock County is bounded as follows: Beginning at the southeast corner of township four, south, range fourteen, west, and thence west to the southeast corner of township four, south, range sixteen, west; thence south on the range line nine miles to the southeast corner of section thirteen, township six, south of range sixteen, west; thence west to the northeast corner of section twenty-one, township six, south, of range sixteen, west; thence south to the southeast corner of said section twenty-one, township six, south, of range sixteen, west; thence west to the northwest corner of section thirty, township six, south, of range sixteen, west; thence south along range line between range sixteen and range seventeen to the southeast corner of section one, township seven, south, of range seventeen, west; thence west to Pearl River; thence down said river by the middle thereof to the most eastern junction of said river with Lake Borgne and thence south to the southern boundary of the state; thence eastwardly with said boundary including all islands within six leagues of the shores of the Gulf of Mexico and Lake Borgne to a point due south of the middle of the entrance of the Bay of St. Louis, thence north to the middle of said entrance; thence northwardly along the middle of the Bay of St. Louis to the range line between ranges thirteen and fourteen, thence north along said range line to the point of beginning. The county site is Bay St. Louis.

SOURCES: Codes, 1871, § 40; 1880, § 44; 1892, § 368; 1906, § 431; Hemingway's 1917, § 3849; 1930, § 3910; 1942, § 3045; Laws, Dec. 14, 1812.

§ 19-1-47. Harrison County.

Harrison County is bounded by beginning at the southeast corner of section twenty-one, township four, south, range nine, west; thence due south through the middle of said range nine to the middle of the Bay of Biloxi; thence along the middle of said Bay of Biloxi to its entrance at the east end of Deer Island; thence due south to the southern boundary of the State of Mississippi on the Gulf of Mexico; thence westwardly along said boundary to a point from which a line due north strikes the middle of the Bay of St. Louis; including all the islands within six leagues of the shore of the Gulf of Mexico; thence due north to the entrance of said bay; thence along the middle of said Bay of St. Louis northwardly to a point from whence the point at which the line between ranges fourteen and thirteen comes to said bay bears due north; thence due north to the southwest corner of section thirty-one, township four, south, range thirteen, west; thence east to the southeast corner of section thirty-six, township four, south, range thirteen, west; thence north to the northeast corner of section twenty-five, township four, south range thirteen, west, thence east to the point of beginning. The county sites are Gulfport and Biloxi.

SOURCES: Codes, 1857, ch. 2, art 88; 1871, § 41; 1880, § 45; 1892, § 369; 1906, § 432; Hemingway's 1917, § 3851; 1930, § 3911; 1942, § 3046; Laws, Feb. 5, 1841.

§ 19-1-49. Hinds County.

Hinds County is bounded by beginning at a point on Big Black River where the line between ranges two and three, west, intersects said river; thence south on said range line to the lines between townships seven and eight; thence east on said township line to the Choctaw basis meridian; thence south on said meridian line to the line between townships six and seven; thence east on said township line to Pearl River; thence down said river, with its meanderings, to the line between townships two and three; thence west with said township line to the old Choctaw boundary line; thence north on said Choctaw boundary line to Big Black River; thence up said river, with the meanderings thereof, to the beginning. The county sites are Jackson and Raymond.

SOURCES: Codes, 1857, ch. 2, art 19; 1871, § 42; 1880, § 46; 1892, § 370; 1906, § 433; Hemingway's 1917, § 3852; 1930, § 3912; 1942, § 3047; Laws, Feb. 12, 1821.

§ 19-1-51. Holmes County.

Holmes County is bounded by beginning in the Yazoo River where it is intersected by the township line between townships seventeen and eighteen, range one, west; thence running southeasterly by the "Gum Corners" to Big Black River, in township sixteen, range five, east; thence down said river, with its meanderings, to Boles' ferry, in section twenty-two, township twelve, range three, east; thence northwesterly in a direct line to where the township line between townships thirteen and fourteen crosses the Yazoo River; thence in a northwestwardly direction with the meanders of Yazoo River and along its center line to its intersection with the center line of Tchula Lake; thence with the meanderings of Tchula Lake and along its center line to its intersection with the line between sections nineteen and twenty, township fifteen, north, range one, west; thence north along the section lines to the center line of the Yazoo River; thence up said river to the beginning. The county site is Lexington.

SOURCES: Codes, 1857, ch. 2, art 45; 1871, § 43; 1880, § 47; 1892, § 371; 1906, § 434; Hemingway's 1917, § 3853; 1930, § 3913; 1942, § 3048; Laws, Feb. 19, 1823.

§ 19-1-53. Humphreys County.

Humphreys County is bounded as follows: Beginning at the intersection of the center line of Sunflower River with the township line between townships sixteen and seventeen; thence in a southerly direction with the meanders of Sunflower River and along its center line to its intersection with the township line between townships fourteen and fifteen; thence east along said line to the northeast corner of township fourteen, north, range five, west; thence south along the east boundary lines of township fourteen, north, range five, west and township thirteen, north, range five, west, to the southwest corner of township thirteen, north, range four, west; thence east along the south boundary line of township thirteen, north, range four, west, and township thirteen, north, range three, west to the southeast corner of township thirteen, north, range three, west; thence north along the east line of said township thirteen, north, range three, west, to the northeast corner of the same; thence east along the south line of township fourteen, north, range two, west, to the southwest corner of section thirty-six, township fourteen, north, range two, west; thence north along the line between sections thirty-five and thirty-six, township fourteen, north, range two, west, to the center line of the Yazoo River; thence in a northwesterly direction with the meanders of the Yazoo River and along its center line to its intersection with the center line of Tchula Lake; thence with the meanders of Tchula Lake and along its center line to its intersection with the line between sections nineteen and twenty, township fifteen, north, range one, west; thence north along the section lines to the center line of the Yazoo River; thence in a southwesterly direction with the meanders of the Yazoo River and along its center line to the Choctaw boundary line; thence in a northwestly direction along the Choctaw boundary line to its intersection with the east line of township sixteen, north, range three, west; thence north along said township line and along the east line of township seventeen, north, range three, west, to the northeast corner of section thirteen, township seventeen, north, range three, west; thence west along the section lines to the northwest corner of section eighteen, township seventeen, north, range three, west; thence south along the west boundary line of township seventeen, north, range three, west to the township line between townships sixteen and seventeen; thence west along said boundary line to the point of beginning. Said description above embraces portions of Washington, Yazoo, Holmes, Sharkey and Sunflower Counties. The county site is Belzoni.

SOURCES: Codes, Hemingway's 1921 Supp § 3853a; 1930, § 3914; 1942, § 3049; Laws, 1918, ch. 348.

§ 19-1-55. Issaquena County.

Issaquena County is bounded by beginning at the northwest corner of section three, township thirteen, range seven, west; thence along the township line between townships thirteen and fourteen, west, to the western boundary of the state; thence southerly along the western boundary of the state to the northwest corner of Warren County; thence east along said county line to the southwest corner of township nine, range seven, west; thence south along the range line between ranges two and three to the Yazoo River; thence along the Yazoo River to the range line between ranges three and four, east; thence north along said range line to the southwest corner of township nine, range six, west; thence east along the boundary of Warren County to Big Sunflower River; thence up said river to the southern boundary of township ten, range five, west; thence west along the township line between townships nine and ten to the northwest corner of township nine, range seven, west; thence along the western boundary of Sharkey County to the beginning. The county site is Mayersville.

SOURCES: Codes, 1871, § 44; 1880, § 48; 1892, § 372; 1906, § 435; Hemingway's 1917, § 3854; 1930, § 3915; 1942, § 3050; Laws, Jan. 23, 1844.

§ 19-1-57. Itawamba County.

Itawamba County is bounded by beginning at the southwest corner of section fourteen, township seven, range seven, east; thence east by section lines to the boundary line between the States of Mississippi and Alabama; thence southerly on said state boundary to a point one mile north of the line between townships eleven and twelve; thence west by section lines to the southwest corner of section twenty-six, township eleven, range seven, east; thence north by section lines to the point of beginning. The county site is Fulton.

SOURCES: Codes, 1857, ch. 2 art 69; 1871, § 45; 1880, § 49; 1892, § 373; 1906, § 436; Hemingway's 1917, § 3855; 1930, § 3916; 1942, § 3051; Laws, Feb. 9, 1836.

§ 19-1-59. Jackson County.

Jackson County is bounded by beginning at the northwest corner of section three, township four, south, range nine west; thence due south through the middle of said range nine to middle of the Bay of Biloxi, thence along the middle of said Bay of Biloxi to its entrance at the east end of Deer Island; thence due south to the southern boundary of the State of Mississippi on the Gulf of Mexico; thence eastwardly along said boundary, including all the islands within six leagues of the shore of the Gulf of Mexico, to the boundary lines between the States of Alabama and Mississippi, thence northwardly along the said boundary line to the point where the township line between townships three and four, south, intersect said state boundary line; thence west along said township line between townships three and four, south, to the point of beginning. The county site is Pascagoula.

SOURCES: Codes, 1871, § 46; 1880, § 50; 1892, § 374; 1906, § 437; Hemingway's 1917, § 3856; 1930, § 3917; 1942, § 3052; Laws, Dec. 14, 1812.

§ 19-1-61. Jasper County.

Jasper County is bounded by beginning at the northwest corner of township four, range ten, east; thence east on the line between townships four and five, north, to the line between ranges thirteen and fourteen, east; thence south on said range line to the Choctaw boundary line; thence westerly on said boundary line to the line between ranges nine and ten, east; thence north on said range line to the beginning. The county sites are Paulding and Bay Springs.

SOURCES: Codes, 1857, ch. 2, art 56; 1871, § 47; 1880, § 51; 1892, § 375; 1906, § 438; Hemingway's 1917, § 3857; 1930, § 3918; 1942, § 3053; Laws, Dec. 3, 1823.

§ 19-1-63. Jefferson County.

Jefferson County is bounded by beginning on the Mississippi River at the southwestern corner of Claiborne County, and thence along the southern boundary of Claiborne County to the Choctaw boundary line; thence south with said boundary to where it crosses the line between townships seven and eight; thence west on said township line to the basis meridian of the Washington district; thence north on said meridian line to the northeast corner of Adams County, at a point due east from the point being the northeast corner of where Edmond Andrews' cotton gin once was; thence due west to such point; thence westerly in a direct line to what was known and called "George Selser's Spring," on the south branch of Fairchild's creek; thence down such south branch to Strover's mound, so-called; thence westerly in a direct line to the upper side of Rose's old settlement, on the Mississippi River; thence up said river to the beginning. The county site is Fayette.

SOURCES: Codes, 1871, § 48; 1880, § 52; 1892, § 376; 1906, § 439; Hemingway's 1917, § 3858; 1930, § 3919; 1942, § 3054; Laws, Jan. 11, 1802.

§ 19-1-65. Jefferson Davis County.

Jefferson Davis County is bounded as follows: Beginning at the southeast corner of section thirty-four, township six, north, of range sixteen; thence due north along section line to Bowie creek; thence northwestwardly up the middle or thread of said creek to where the same crosses the line between townships seven and eight; thence due west along said township line to the line between ranges seventeen and eighteen, west; thence due north along said range line to the old Choctaw boundary line; thence westwardly along the old Choctaw boundary line to a point where the same is intersected by the line between sections eleven and twelve, in township nine, north, of range twenty, west; thence due south along section lines to the line between townships six and seven, range twenty, west; thence due east along said township line one mile to the range line between ranges nineteen and twenty, west; thence due south to the southwest corner of section eighteen, township five, north, range nineteen, west; thence east to the southwest corner of section sixteen, township five, north, range eighteen, west; thence north to the township line between townships five and six, north, and thence east to the point of beginning. The county site is Prentiss.

SOURCES: Codes, Hemingway's 1917, § 3859; 1930, § 3920; 1942, § 3055; Laws, 1906, ch. 166.

§ 19-1-67. Jones County.

Jones County is bounded by beginning at the point where the Choctaw boundary line crosses the center of range fourteen, west; thence easterly on said Choctaw boundary line to the line between ranges nine and ten, west; thence south with said range line to the township line between townships five and six; thence west with said township line to the center of range fourteen, west; thence north with the section lines, in the center of said range, to the beginning. The county sites are Ellisville and Laurel.

SOURCES: Codes, 1857, ch. 2, art 31; 1871, § 49; 1880, § 53; 1892, § 377; 1906, § 440; Hemingway's 1917, § 3860; 1930, § 3921; 1942, § 3056; Laws, Jan. 24, 1826.

§ 19-1-69. Kemper County.

Kemper County is bounded by beginning at the northwest corner of township twelve, range fourteen, east; thence east between townships twelve and thirteen to the boundary line with the State of Alabama; thence southerly on said boundary line to the line between townships eight and nine, north; thence west with said township line to the line between ranges thirteen and fourteen, east; thence north on said range line to the beginning. The county site is DeKalb.

SOURCES: Codes, 1857, ch. 2, art 47; 1871, § 50; 1880, § 54; 1892, § 378; 1906, § 441; Hemingway's 1917, § 3861; 1930, § 3922; 1942, § 3057; Laws, Dec. 23, 1823.

§ 19-1-71. Lafayette County.

Lafayette County is bounded by beginning at the center of township six, range five, west; thence east on the section line to Little Spring creek; thence southeasterly down said creek to its intersection with the Tallahatchie River; thence up said river to the basis meridian of the Chickasaw survey; thence south on the said meridian line to the line between townships ten and eleven; thence west on said township line to the southwest corner of section thirty-four, township ten, range three, west; thence north to the southwest corner of section twenty-two, township ten, range three, west; thence west to the southwest corner of section twenty-two, township ten, range five, west; thence north to the beginning. The county site is Oxford.

SOURCES: Codes, 1857, ch. 2, art 74; 1871, § 51; 1880, § 55; 1892, § 379; 1906, § 442; Hemingway's 1917, § 3862; 1930, § 3923; 1942, § 3058; Laws, Feb. 9, 1836.

§ 19-1-73. Lamar County.

Lamar County is bounded and described as commencing at the northwest corner of township five, north, range sixteen west; thence running south along the range line between ranges sixteen and seventeen to the thirty-first parallel of latitude, said point being the southwest corner of township one, north, range sixteen, west; thence east along the said thirty-first parallel of latitude to the southeast corner of township one, north, range sixteen, west; thence north one mile to the north boundary line of Pearl River county as it existed prior to the adoption of the Code of 1930; thence east, parallel with said thirty-first parallel of latitude, to the section line between sections twenty-seven and twenty-eight, township one, north, range fifteen, west; thence south to the thirty-first parallel of latitude; thence east to the northeast corner of section three, township one, south, range fifteen, west; thence south to the southeast corner of section three, township one, south, range fifteen, west; thence east along section lines to the section corner common to sections five, six, seven, and eight in township one, south, range fourteen, west; thence north to the said thirty-first parallel of latitude; thence east to the center or half-section line of section thirty-two of township one, north, range fourteen, west; thence north on half-section line of section thirty-two, township one, north, range fourteen, west, to the south line of section twenty-nine; thence east along section lines to the range line between ranges thirteen and fourteen, west; thence north along said range line to the northeast corner of township four, north, range fourteen, west; thence west to the northwest corner of said last mentioned township; thence north along the range line between ranges fourteen and fifteen to the northeast corner of township five, north, range fifteen, west; thence west twelve miles to the point of beginning. The county site is Purvis.

SOURCES: Codes, 1906, § 443; Hemingway's 1917, § 3863; 1930, § 3924; 1942, § 3059; Laws, Mar. 10, 1904; Laws, 1934, ch. 238.

§ 19-1-75. Lauderdale County.

Lauderdale County is bounded by beginning at the northwest corner of township eight, range fourteen, east; thence east on the said township line to the state boundary with the State of Alabama; thence southerly with the said boundary line to the line between townships four and five, north; thence west with said township line to the line between ranges thirteen and fourteen, east; thence north on said range line to the beginning. The county site is Meridian.

SOURCES: Codes, 1857, ch. 2, art 48; 1871, § 52; 1880, § 56; 1892, § 380; 1906, § 444; Hemingway's 1917, § 3864; 1930, § 3925; 1942, § 3060; Laws, Dec. 23, 1823.

§ 19-1-77. Lawrence County.

Lawrence County is bounded as beginning at the southwest corner of township five, north, range ten, east, thence east along the line separating townships four and five to the northeast corner of section five, township four, north, range eleven, east; thence south with the east boundary line of section five to the northeast corner of the southeast quarter of said section five; thence east along the half section line of section four to the northeast corner of the southeast quarter of said section four; thence south with the east boundary of section four to the southeast corner of said section four; thence east along the south boundary line of section three to the southeast corner of the southwest quarter of said section three; thence south along the half section line of section ten to the center of section ten; thence east along the half section line of sections ten, eleven and twelve to the southeast corner of the southwest quarter of the northwest quarter of said section twelve, township four, north, range eleven, east; thence north along the east boundary of the southwest quarter of the northwest quarter of section twelve to the northeast corner of the southwest quarter of the northwest quarter of said section; thence east along the south boundary line of the northeast quarter of the northwest quarter of section twelve to the southeast corner of the northeast quarter of the northwest quarter of section twelve; thence north along the half section line of section twelve to the northeast corner of the northwest quarter of section twelve; thence east along the north boundary line of section twelve to the northeast corner of said section twelve and until it intersects the line between ranges eleven and twelve, east; thence north along the said range line to the southwest corner of section eighteen, township five, north, range twelve east; thence east with the section lines to the Pearl River; thence up said river with its meanderings to where the the line between sections thirteen and twenty-four in township five, north range twenty, west, intersects said river; thence east to the range line between ranges nineteen and twenty, west; thence north along said range line to the township line between townships six and seven; thence west along the township line between township six and seven one mile to the southwest corner of section thirty-six in township seven, range twenty, west; thence north along section lines to the Old Choctaw boundary line; thence westwardly along the Old Choctaw boundary line to the point where the same is intersected by the range line between ranges nine and ten, east; thence south on said range line to the place of beginning. The county site is Monticello.

SOURCES: Codes, 1871, § 53; 1880, § 57; 1892, § 381; 1906, § 445; Hemingway's 1917, § 3865; 1930, § 3926; 1942, § 3061; Laws, Dec. 22, 1814; Laws, 1908, ch. 153.

§ 19-1-79. Leake County.

Leake County is bounded by beginning at the northwest corner of township twelve, range six, east; thence east on the line between townships twelve and thirteen to the range line between ranges nine and ten, east; thence south on said range line to the township line between townships eight and nine; thence west on said line to the range line between ranges five and six, east; thence north on said range line to the beginning. The county site is Carthage.

SOURCES: Codes, 1857, ch. 2, art 60; 1871, § 54; 1880, § 58; 1892, § 382; 1906, § 446; Hemingway's 1917, § 3866; 1930, § 3927; 1942, § 3062; Laws, Dec. 23, 1833.

§ 19-1-81. Lee County.

Lee County is bounded by beginning at the southwest corner of section seven, township eight, range five, east; thence east with the section line to the southeast corner of section eight, in the same township; thence north on the section lines to the southeast corner of section five, township seven, range five, east; thence east to the southwest corner of section one, in the same township; thence north to the northwest corner of the same section; thence east on the township line to the northeast corner of section three, township seven, range seven, east; thence south on section lines to the northeast corner of section thirty-four, township eleven, range seven, east; thence west on section lines to the line between ranges five and six, east; thence south on said range line to the line between townships eleven and twelve; thence west on said township line to the southeast corner of section thirty-six, township eleven, range four, east; thence north on range line between four and five to the northeast corner of section twenty-five, township eight, range four, east; thence north on range line between four and five to the point of beginning. The county site is Tupelo.

SOURCES: Codes, 1871, § 55; 1880, § 59; 1892, § 383; 1906, § 447; Hemingway's 1917, § 3867; 1930, § 3928; 1942, § 3063; Laws, Oct. 26, 1866; Laws, 1908, ch. 154.

§ 19-1-83. Leflore County.

Leflore County is bounded by beginning at the southwest corner of township seventeen, range two west; thence south along the western boundary line of section seven, township sixteen, range two west, to the Choctaw boundary line; thence southeasterly along said Choctaw boundary line to the Yazoo River; thence up said river to the northwest corner of Holmes County; thence southeast along the line of Holmes County to the point at which said line is crossed by the lines between sections fourteen and fifteen, township seventeen, range one, east; thence north with section line to the southwest corner of section fourteen, township eighteen, range one, east; thence east to range line between ranges one and two, east; thence north on said line to the northwest corner of township eighteen, range two, east; thence east to the southeast corner of section thirty-two, township nineteen, range two, east; thence north to the northeast corner of section seventeen, township twenty, range two, east; thence west by section lines to the middle of the Yalobusha River; thence with its meanderings to the Grenada County line; thence west along the said line to the southwest corner of Grenada County; thence north on the Grenada County line to the southern boundary of township twenty-two; thence west along said line to the west bank of the Tallahatchie River; thence up said river to the point at which it is crossed by the northern boundary of township twenty-two; thence west on said line to the southwest corner of Tallahatchie County; thence south on the range line between ranges two and three, west, to the beginning. The county site is Greenwood.

SOURCES: Codes, 1871, § 57; 1880, § 60; 1892, § 384; 1906, § 448; Hemingway's 1917; § 3868; 1930, § 3929; 1942, § 3064; Laws, Mar. 15, 1871; Laws, 1940, ch. 322.

§ 19-1-85. Lincoln County.

Lincoln County is bounded by beginning at a point on the old Choctaw boundary line where the line between townships eight and nine intersects the same; thence east on said township line to the northwest corner of section four, township eight, range eight, east; thence south to the southwest corner of said section; thence east to the southeast corner of section three in the same township; thence north to the line between said townships eight and nine; thence east on said township line to the Choctaw boundary; thence northeast to the line between ranges nine and ten, east; thence south with said range line to the line between townships four and five, north; thence west with said township line to a point one mile east of the line between ranges five and six, east; thence north on section lines to the township line between townships seven and eight; thence west to the Choctaw boundary line where the line between townships seven and eight intersects the same; thence north with the Choctaw boundary line to the beginning. The county site is Brookhaven.

SOURCES: Codes, 1871, § 57; 1880, § 61; 1892, § 385; 1906, § 449; Hemingway's 1917, § 3869; 1930, § 3930; 1942, § 3065; Laws, Apr. 7, 1870.

§ 19-1-87. Lowndes County.

Lowndes County is bounded by beginning at the southwest corner of section eighteen, township nineteen, range sixteen, east; thence east to the southwest corner of section fourteen, township nineteen, range sixteen, east; to Catalpa creek; thence down its meanderings to its junction with Tibbee creek; thence with Tibbee creek to its junction with the Tombigbee River; thence with it, and by the middle thereof, to the mouth of Buttahatchie River; thence up said river with its meanderings to a point immediately west of Robinson's bluff, which point is where the middle line (east and west) of the north half of south half of section 21, township 15, range 17 west intersects with the center line of said Buttahatchie River, thence due east to Robinson's bluff, and continuing east along the subdivision line named across sections 21, 22, 23, and 24, township 15, range 17 west, and across section 19, township 15, range 16 west to Mississippi and Alabama State line; thence southerly with said line to the line between townships sixteen and seventeen, north; thence west on said township line to the southwest corner of township seventeen, range sixteen, east; thence north on the line between ranges fifteen and sixteen to the beginning. The county site is Columbus.

SOURCES: Codes, 1857, ch. 2, art 41; 1871, § 58; 1880, § 62; 1892, § 386; 1906, § 450; Hemingway's 1917, § 3870; 1930, § 3931; 1942, § 3066; Laws, Jan. 30, 1830; Laws, 1944, ch. 409.

§ 19-1-89. Madison County.

Madison County is bounded by beginning at a point on Big Black River, where the same crosses the center line in township twelve, range three, east;

thence east to the old Choctaw boundary line; thence north on said boundary line to the center line of township twelve, range five, east; thence through the center of said township twelve, range five, east, to the range line between townships five and six, east; thence south on said range line to Pearl River; thence down said river, with its meanderings, to the line between townships six and seven, north; thence west on said township line to the basis meridian of the Choctaw survey; thence north on said meridian line to the line between townships seven and eight, north; thence west on said township line to the line between ranges two and three, west; thence north on said range line to Big Black River; thence up said river, with its meanderings, to the beginning. The county site is Canton.

SOURCES: Codes, 1871, § 59; 1880, § 63; 1892, § 387; 1906, § 451; Hemingway's 1917, § 3871; 1930, § 3932; 1942, § 3067; Laws, Jan. 29, 1828.

§ 19-1-91. Marion County.

Marion County is bounded by beginning on the line between ranges eleven and twelve east at the southwest corner of section eighteen, township five, north, range twelve, east; thence east along the section lines to Pearl River, thence up said river with its meanderings to where the line between sections thirteen and twenty-four in township five, north, range twenty, west, intersects said river; thence east with section lines to the southeast corner of section seventeen, township five, north, range eighteen, west; thence north with section lines to the northeast corner of section five, township five, north, range eighteen, west; thence east with township lines to the range line between ranges sixteen and seventeen, west; thence south on the range line to where it intersects the thirty-first parallel of latitude; thence west along said thirty-first parallel to the range line between ranges thirteen and fourteen, east; thence north along said range line to the northeast corner of section twelve, township one, north, range thirteen, east; thence west along north section lines of sections twelve, eleven, ten, nine and eight to the northwest corner of section eight, township one, north, range thirteen, east; thence north to the southwest corner of section thirty-two, township two, north, range thirteen, east; thence west along township line one-half mile to the southwest corner of the southeast quarter of section thirty-one, township two, north, range thirteen, east; thence north one and one-half miles to the center of section thirty, township two, north, range thirteen, east; thence west one-half mile to the range line between ranges twelve and thirteen, east; thence north on the said range line one and one-half miles to the southeast corner of section thirteen, township two, north, range twelve, east; thence west along the south boundary lines of sections thirteen, fourteen, fifteen and sixteen to the southwest corner of section sixteen, township two, north, range twelve, east; thence north along section lines to township line between townships two and three, north, range twelve, east, this point being at the southwest corner of section thirty-three, township three, north, range twelve, east; thence west one and one-half miles along the township line to the southwest corner of the southeast quarter of section thirty-one, township three, north, range twelve, east; and thence north along the half section line dividing sections thirty-one, thirty, nineteen and eighteen to the northwest corner of the northeast quarter of section eighteen, township three, north, range twelve, east; thence west one-half mile to the range line between ranges eleven and twelve, east, this point being at the southwest corner of section seven, township three, north, range twelve, east; thence north along the range line between ranges eleven and twelve eleven miles to the point of beginning. The county site is Columbia.

SOURCES: Codes, 1871, § 60; 1880, § 64; 1892, § 388; 1906, § 452; Hemingway's 1917, § 3872; 1930, § 3933; 1942, § 3068; Laws, Dec. 9, 1811.

§ 19-1-93. Marshall County.

Marshall County is bounded by beginning on the line between the States of Mississippi and Tennessee at the center of range five, west; thence east on said state line to the line between ranges one and two, west; thence south on said line to the southwest corner of section six, township three, range one, west; thence east on section lines to the southeast corner of section four, township three, range one, west; thence due south on section lines to the southwest corner of section three, township six, range one, west; thence east to the basis meridian; thence south by said meridian to the Tallahatchie River; thence down said river, with its meanderings, to the mouth of Little Spring Creek; thence up said creek to the center of township six; thence west by section lines to the line between ranges four and five, west; thence north to the line between townships four and five; thence west to the center of range five, west; thence due north to the beginning. The county site is Holly Springs.

SOURCES: Codes, 1857, ch. 2, art 73; 1871, § 61; 1880, § 65; 1892, § 389; 1906, § 453; Hemingway's 1917, § 3873; 1930, § 3934; 1942, § 3069; Laws, Feb. 9, 1836.

§ 19-1-95. Monroe County.

Monroe County is bounded by beginning on the range line between ranges five and six, east, one mile north of the township line between townships eleven and twelve, south; thence east by section lines to the line between the states of Mississippi and Alabama; thence southerly on said state line to a point due east from Robinson's bluff, on the Buttahatchie River; which is the point where the middle line (east and west) of the north half of south half of section 21, township 15, range 17 west intersects with the center line of said Buttahatchie River immediately west of said Robinson's bluff, thence due west from said point on said Mississippi and Alabama State line continuing along the subdivision line named through section 19, township 15, range 16 west and sections 24, 23, 22 and 21, township 15, range 17 west to where said subdivision line intersects the center line of Buttahatchie River; thence down said river, with its meanderings, to the Tombigbee River; thence up said river to the point where the section line running east from the northwest corner of section twenty-four, township sixteen, range seven, east, intersects said river; thence west to the line between ranges five and six, east; thence north on said range line to the beginning. The county site is Aberdeen.

SOURCES: Codes, 1857, ch. 2, art 78; 1871, § 62; 1880, § 66; 1892, § 390; 1906, § 454; Hemingway's 1917, § 3874; 1930, § 3935; 1942, § 3070; Laws, Feb. 9, 1821; Laws, 1944, ch. 412.

§ 19-1-97. Montgomery County.

Montgomery County is bounded by beginning on the southern boundary of Grenada County where it crosses the northwest corner of section twenty-one, township twenty-one, range five, east; thence south along section lines to the northwest corner of section twenty-one, township eighteen, range five, east; thence along section lines to the range line between ranges five and six, east; thence south one mile; thence east to the northeast corner of section twenty-seven, township eighteen, range six, east; thence south to the southwest corner of section thirty-five, township seventeen, range six, east; thence west to the Big Black River, and along it, by its meanderings, to the point at which the line between townships sixteen and seventeen crosses said river, thence east on the line of Attala County to the southeast corner of section thirty-three, township seventeen, range eight, east; thence north on section lines to where Big Black River crosses the line between sections fifteen and sixteen, township eighteen, range eight, east; thence up said river to where the township line between townships eighteen and nineteen crosses it; thence west to the northwest corner of township eighteen, range eight, east; thence north to Grenada County; thence to the beginning. The county site is Winona.

SOURCES: Codes, 1871, § 63; 1880, § 67; 1892, § 391; 1906, § 455; Hemingway's 1917, § 3875; 1930, § 3936; 1942, § 3071; Laws, May 13, 1871.

§ 19-1-99. Neshoba County.

Neshoba County is bounded by beginning at the northwest corner of township twelve, range ten, east; thence east on the township line to the southeast corner of township thirteen, range twelve, east; thence south with range line to the northwest corner of township twelve, range thirteen, east; thence east with the township line to the northeast corner of section four, township twelve, range thirteen, east; thence south on the line between sections three and four, one-half mile; thence east to the line between sections one and two, township twelve, range thirteen, east; thence north to the northeast corner of section two, township twelve, range thirteen, east; thence east on the township line to the range line between ranges thirteen and fourteen, east; thence south on said range line to the line between townships eight and nine, north; thence west on said township line to the line between ranges nine and ten, east; thence north on said range line to the beginning. The county site is Philadelphia.

SOURCES: Codes, 1857, ch. 2, art 86; 1871, § 64; 1880, § 68; 1892, § 392; 1906, § 456; Hemingway's 1917, § 3876; 1930, § 3937; 1942, § 3072; Laws, Dec. 23, 1833.

§ 19-1-101. Newton County.

Newton County is bounded by beginning at the northwest corner of township eight, north, range ten, east; thence east on the township line to the line between ranges thirteen and fourteen, east; thence south on said range line to the line between townships four and five, north; thence west on said township line to the line between ranges nine and ten, east; thence north on said range line to the beginning. The county site is Decatur.

SOURCES: Codes, 1857, ch. 2, art 82; 1871, § 65; 1880, § 69; 1892, § 393; 1906, § 457; Hemingway's 1917, § 3877; 1930, § 3938; 1942, § 3073; Laws, Feb. 23, 1836.

§ 19-1-103. Noxubee County.

Noxubee County is bounded by beginning at the northwest corner of township sixteen, range fifteen, east; thence east on the township line to the boundary line between the States of Mississippi and Alabama; thence southerly with said boundary line to the line between townships twelve and thirteen, north; thence west with said township line to the line between ranges fourteen and fifteen, east; thence north on said range line to the beginning. The county site is Macon.

SOURCES: Codes, 1857, ch. 2, art 46; 1871, § 66; 1880, § 70; 1892, § 394; 1906, § 458; Hemingway's 1917, § 3878; 1930, § 3939; 1942, § 3074; Laws, Dec. 23, 1833.

§ 19-1-105. Oktibbeha County.

Oktibbeha County is bounded by beginning on the range line between ranges eleven and twelve, east, at the southwest corner of section thirty, township twenty, range twelve, east; thence east to the range line between ranges fifteen and sixteen, east; thence south on said range line to the line between townships sixteen and seventeen, north; thence west on said township line to the southwest corner of township seventeen, range twelve, east; thence north on the line between ranges eleven and twelve, east, to the beginning. The county site is Starkville.

SOURCES: Codes, 1857, ch. 2, art 50; 1871, § 67; 1880, § 71; 1892, § 395; 1906, § 459; Hemingway's 1917, § 3879; 1930, § 3940; 1942, § 3075; Laws, Dec. 23, 1833.

§ 19-1-107. Panola County.

Panola County is bounded by beginning on the line between ranges nine and ten, west, at the center of township six; thence east on section lines to the center of township six, range five, west; thence south with sectional lines through the center of said range to the line between townships ten and eleven, south; thence west on said township line to the northeast corner of township twenty-six, range one, east; thence north to the line between the Chickasaw and Choctaw cessions; thence along said line to the west boundary of township nine, range nine, west; thence north to the beginning. The county sites are Sardis and Batesville.

SOURCES: Codes, 1857, ch. 2, art 76; 1871, § 68; 1880, § 72; 1892, § 396; 1906, § 460; Hemingway's 1917, § 3880; 1930, § 3941; 1942, § 3076; Laws, Feb. 8, 1936.

§ 19-1-109. Pearl River County.

Pearl River County is bounded by beginning at a point on the state line in Pearl River where the thirty-first parallel of latitude crosses said river and running east along said parallel to the southeast corner of township one, north, range sixteen, west; thence north one mile to the line which was the north boundary line of Pearl River County prior to the adoption of the Code of 1930; thence east, parallel with the thirty-first degree of latitude, to the section line between twenty-seven and twenty-eight, township one, north, range fifteen, west; thence south to the said thirty-first parallel of latitude; thence east to the northeast corner of section three, township one, south, range fifteen, west; thence south to the southeast corner of section three, township one, south, range fifteen, west; thence east along section lines to the section corner common to sections five, six, seven, and eight in township one, south, range fourteen, west; thence north to said thirty-first parallel of latitude; thence east one-half mile to the center of section thirty-two of township one, north, range fourteen, west; thence north on half-section line of said section thirty-two to the south line of section twenty-nine; thence east along section lines to the range line between ranges thirteen and fourteen, west; thence south to the said thirty-first parallel of latitude, which point is the southeast corner of section thirty-six, township one, north, range fourteen, west; thence east along the said thirty-first parallel of latitude to the northeast corner of section one, township one, south, range fourteen, west; thence south on the range line to the southeast corner of township four, south, range fourteen, west; thence west to the southeast corner of township four, south, range sixteen, west; thence south on the range line nine miles to the southeast corner of section thirteen, township six, south, range sixteen, west; thence west to the northeast corner of section twenty-one, township six, south, range sixteen, west; thence south to the southeast corner of said section twenty-one, township six, south, range sixteen, west; thence west to the northwest corner of section thirty, township six, south, range sixteen, west; thence along range line between ranges sixteen and seventeen to the southeast corner of section one, township seven, south, range seventeen, west; thence west to Pearl River; thence north along the middle of said river to the point of beginning. The county site is Poplarville.

SOURCES: Codes, 1892, § 397; 1906, § 461; Hemingway's 1917, § 3881; 1930, § 3942; 1942, § 3077; Laws, Feb. 22, 1890; Laws, 1934, ch. 238.

§ 19-1-111. Perry County.

Perry County is bounded by beginning at the northwest corner of township five, range eleven, west; thence east on the township line to the line between ranges eight and nine, west; thence south on said range line to the line between townships one and two, south; thence west on said township line to the line between ranges eleven and twelve, west; thence north on said range line to the beginning. The county site is New Augusta.

SOURCES: Codes, 1871, § 69; 1880, § 73; 1892, § 398; 1906, § 462; Hemingway's 1917, § 3882; 1930, § 3943; 1942, § 3078; Laws, Feb. 3, 1820.

§ 19-1-113. Pike County.

Pike County is bounded by beginning at the northwest corner of township four, north, range seven, east; thence east on the township line to the northeast corner of section two, township four, north, range nine, east; thence due south along the east line of sections two, eleven, fourteen, twenty-three, twenty-six and thirty-five of townships four, three, two and one respectively to the thirty-first parallel of latitude, being the line between the States of Louisiana and Mississippi; thence west along the said thirty-first degree, being the boundary line between the states aforesaid, to the range line between ranges six and seven, east; thence north along said range line to the point of beginning. The county site is Magnolia.

SOURCES: Codes, 1871, § 70; 1880, § 74; 1892, § 399; 1906, § 463; Hemingway's 1917, § 3883; 1930, § 3944; 1942, § 3079; Laws, Feb. 9, 1815; Laws, 1908, ch. 153.

§ 19-1-115. Pontotoc County.

Pontotoc County is bounded by beginning on the basis meridian of the Chickasaw survey at the northwest corner of section nineteen, township eight, range one, east; thence east on the section lines to the northwest corner of section nineteen, township eight, range four, east; thence south to the southwest corner of section nineteen, township eight, range four, east; thence east to the northwest corner of section thirty, township eight, range five, east; thence south on range lines between four and five to the southeast corner of section thirty-six, in township eleven, range four, east; thence west on line between townships eleven and twelve to the basis meridian; thence north to the point of beginning. The county site is Pontotoc.

SOURCES: Codes, 1857, ch. 2, art 71; 1871, § 71; 1880, § 75; 1892, § 400; 1906, § 464; Hemingway's 1917, § 3884; 1930, § 3945; 1942, § 3080; Laws, Feb. 9, 1836; Laws, 1908, ch. 154.

§ 19-1-117. Prentiss County.

Prentiss County is bounded by beginning at the northwest corner of section seven, township four, range six, east; thence east by sectional lines to the northwest corner of section ten, township four, range nine, east; thence south to the southwest corner of said section; thence east to the southeast corner of said section; thence south by sectional lines to the southeast corner of section fifteen, township seven, range nine, east; thence west by sectional lines to the southwest corner of section fourteen, township seven, range seven, east; thence north by sectional lines to the line between townships six and seven; thence west on said township line to the southwest corner of section thirty-six, township six, range five, east; thence north by section lines to the northwest corner of section one in same township and range; thence east to the line between ranges five and six, east; thence north on said line to the beginning. The county site is Booneville.

SOURCES: Codes, 1871, § 72; 1880, § 76; 1892, § 401; 1906, § 465; Hemingway's 1917, § 3885; 1930, § 3946; 1942, § 3081; Laws, Apr. 15, 1870.

§ 19-1-119. Quitman County.

Quitman County is bounded by beginning at the northeast corner of Coahoma County, and running thence south with the boundary of Coahoma County to the northeast corner of section thirty-three, township twenty-eight, range two, west; thence west on section lines to the range line between ranges two and three, west; thence south on the range line to the southwest corner of township twenty-six, range two, west; thence east on the township line to the range line between ranges one and two, east; thence north on said line to the boundary line between the Chickasaw and Choctaw cessions; thence northwest with said line to the point at which it touches the western boundary of Panola County; thence north with said boundary to the northeast corner of township seven, range ten, west, of the Chickasaw survey; thence west with the northern line of said township to the northwest corner thereof; thence south with the west line of said township to the township line between townships seven and eight; thence west with said township line to the beginning. The county site is Marks.

SOURCES: Codes, 1880, § 77; 1892, § 402; 1906, § 466; Hemingway's 1917, § 3886; 1930, § 3947; 1942, § 3082; Laws, Feb. 1, 1877.

§ 19-1-121. Rankin County.

Rankin County is bounded by beginning on Pearl River, in township nine, range five, east, where the old Choctaw boundary crosses said river; thence southeast with said boundary to where the same intersects the line between ranges five and six, east; thence south with said range line to the line between townships two and three, north; thence west on said township line to Pearl

River; thence up said river, with its meanderings, to the beginning. The county site is Brandon.

SOURCES: Codes, 1871, § 73; 1880, § 78; 1892, § 403; 1906, § 467; Hemingway's 1917, § 3887; 1930, § 3948; 1942, § 3083; Laws, Feb. 4, 1828.

§ 19-1-123. Scott County.

Scott County is bounded by beginning on the old Choctaw boundary line, where the same crosses Pearl River; thence up said river with its meanderings, to the line between ranges five and six east; thence south on said range line to the line between townships eight and nine, north; thence east on said township line to the line between ranges nine and ten, east; thence south on said range line to the line between townships four and five, north; thence west on said township line to the old Choctaw boundary; thence southerly on said Choctaw boundary to its intersection with the same township line running west; thence west to the line between ranges five and six, east; thence north on said range line to its intersection with the Choctaw boundary; thence north with said boundary line to the beginning. The county site is Forest.

SOURCES: Codes, 1857, ch. 2, art 59; 1871, § 75; 1880, § 79; 1892, § 404; 1906, § 468; Hemingway's 1917, § 3888; 1930, § 3949; 1942, § 3084; Laws, Dec. 23, 1833.

§ 19-1-125. Sharkey County.

Sharkey County is bounded by beginning at the northwest corner of section three, township thirteen, range seven, west; thence in a direct line to the north line of township fourteen; thence east along said township line between townships fourteen and fifteen, to the northeast corner of township fourteen, range five, west; thence south along the east boundary lines of township fourteen, north, range five, west, and township thirteen, north, range five, west to the southwest corner of township thirteen, north, range four, west; thence down the west boundary of Yazoo County to where it connects with the Sunflower River, following its meanderings, to the south line of township ten, range five, west; thence west along said township line to the northwest corner of township nine, range seven, west; thence north on the range line between ranges seven and eight to its intersection with the east prong of Steel's bayou; thence up said east prong, following its meanderings, to the Indian bayou; thence up said Indian bayou, with its meanderings, to where it intersects the west boundary line of section twenty-seven, township thirteen, range seven, west; thence northwardly along the west boundary line of sections twenty-seven, twenty-two, fifteen, ten, and three to the beginning. The county site is Rolling Fork.

SOURCES: Codes, 1880, § 80; 1892, § 405; 1906, § 469; Hemingway's 1917, § 3889; 1930, § 3950; 1942, § 3085; Laws, Mar. 29, 1876.

§ 19-1-127. Simpson County.

Simpson County is bounded by beginning on the line between townships two and three, north, where the same crosses Pearl River; thence east on said township line to its intersection with the old Choctaw boundary; thence south with said Choctaw boundary, and on the range line between ranges sixteen and seventeen, west, to the intersection of the Choctaw boundary line; thence westerly with said Choctaw boundary line to Pearl River; thence up said river, with its meanderings, to the beginning. The county site is Mendenhall.

SOURCES: Codes, 1857, ch. 2, art 25; 1871, § 76; 1880, § 81; 1892, § 406; 1906, § 470; Hemingway's 1917, § 3890; 1930, § 3951; 1942, § 3086; Laws, Jan. 23, 1824.

§ 19-1-129. Smith County.

Smith County is bounded by beginning at the northwest corner of township four, range six, east; thence east to the Choctaw boundary; thence northerly with said boundary to the line between townships four and five, north; thence east on said township line to the line between ranges nine and ten, east; thence south on said range line to the Choctaw boundary line; thence west on said boundary line to the line between ranges sixteen and seventeen, west; thence north to the Choctaw boundary line; thence northwest to the line between townships two and three, north; thence west on said township line to the line between ranges five and six, east; thence north on said range line to the beginning. The county site is Raleigh.

SOURCES: Codes, 1857, ch. 2, art 58; 1871, § 74; 1880, § 82; 1892, § 407; 1906, § 471; Hemingway's 1917, § 3891; 1930, § 3952; 1942, § 3087; Laws, Dec. 23, 1833.

§ 19-1-131. Stone County.

Stone County is bounded by beginning at the northwest corner of section six, township two, south, range thirteen, west; thence running south along the eastern boundary line of Pearl River County to the southwest corner of section thirty-one, township four, south, range thirteen, west; thence running east to the southeast corner of section thirty-six, township four, south, range thirteen, west; thence running north to the northeast corner of section twenty-five, township four, south, range thirteen, west; thence running east to the southeast corner of section twenty-one, township four, south, range nine, west; thence running north along the eastern boundary line of Jackson and George Counties to the northeast corner of section four, township two, south, range nine, west; thence running west to the point of beginning. The county site is Wiggins.

SOURCES: Codes, Hemingway's 1917, § 3892; 1930, § 3953; 1942, § 3088; Laws, 1916, ch. 527.

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 19-1-133. Sunflower County.

Sunflower County is bounded by beginning at the northwest corner of township twenty-four, range four, west; thence east on the township line to the line between ranges two and three, west; thence south to the northeast corner of section thirteen, township seventeen, north, range three, west; thence west along the section lines to the northwest corner of section eighteen, township seventeen, north, range three, west; thence south along west boundary line of township seventeen, north, range three, west, to the township line between townships sixteen and seventeen, range three, west; thence west along the township line to the range line between ranges five and six, west; thence north on the range line to the township line between townships twenty and twenty-one; thence east on said township line to the range line between ranges four and five, west; thence north on said range line to the beginning. The county site is Indianola.

SOURCES: Codes, 1857, ch. 2, art 92; 1871, § 77; 1880, § 84; 1892, § 408; 1906, § 472; Hemingway's 1917, § 3893; 1930, § 3954; 1942, § 3089; Laws, Feb. 15, 1844.

§ 19-1-135. Tallahatchie County.

Tallahatchie County is bounded by beginning at the southwest corner of township twenty-six, range two, west; thence east on the township line to the line between ranges one and two, east; thence north on the range line to the township line between townships twenty-six and twenty-seven; thence east to the line between ranges three and four, east; thence south on said range line to the northeast corner of section thirty-six, township twenty-three, range three, east; thence west on sectional lines to the northwest corner of section thirty-four in said township and range; thence south to the line between townships twenty-two and twenty-three; thence west on said township line to the southwest corner of township twenty-three, range two, east; thence south to the township line between townships twenty-one and twenty-two; thence west to the Tallahatchie River; thence up said river, with its meanderings, to the line between townships twenty-two and twenty-three; thence west on said township line to the line between ranges two and three, west; thence north on said range line to the beginning. The county sites are Charleston and Sumner.

SOURCES: Codes, 1857, ch. 2, art 53; 1871, § 78; 1880, § 85; 1892, § 409; 1906, § 473; Hemingway's 1917, § 3894; 1930, § 3955; 1942, § 3090; Laws, Dec. 23, 1833; Laws, 1902, ch. 135.

§ 19-1-137. Tate County.

Tate County is bounded by beginning on the Coldwater River, where the line between townships three and four intersects it; thence to the southeast corner of section thirty-three, township three, range five, west; thence south to the southwest corner of section thirty-four, township four, range five, west; thence east to the line between ranges four and five, west; thence south with said line to the southeast corner of section thirteen, township six, range five, west; thence west on section lines to the boundary line of Tunica County, on Coldwater River; thence up the meanderings of said river to the beginning. The county site is Senatobia.

SOURCES: Codes, 1880, § 86; 1892, § 410; 1906, § 474; Hemingway's 1917, § 3895; 1930, § 3956; 1942, § 3091; Laws, Apr. 15, 1873.

§ 19-1-139. Tippah County.

Tippah County is bounded by beginning at a point on the state boundary line with Tennessee one mile east of the line between ranges two and three, east; thence east on said state boundary line to the line between ranges four and five, east; thence south on said range line to the line between townships two and three, south; thence east on said township line to the northwest corner of section two, township three, range five, east; thence south on section lines to the southwest corner of section two, township four, range five, east; thence east on section lines to the line between ranges five and six, east; thence south on the said range line to the line between townships five and six, south; thence west on said township line to the southeast corner of section thirty-three, township five, range two, east; thence north on section lines to the southeast corner of section sixteen, township three, range two, east; thence east on section lines to the line between ranges two and three, east; thence north on said range line to the line between townships two and three, south; thence east on said township line to the southeast corner of section thirty-one, township two, range three, east; thence north on section lines to the beginning. The county site is Ripley.

SOURCES: Codes, 1857, ch. 2, art 70; 1871, § 79; 1880, § 87; 1892, § 411; 1906, § 475; Hemingway's 1917, § 3896; 1930, § 3957; 1942, § 3092; Laws, Feb. 9, 1836.

§ 19-1-141. Tishomingo County.

Tishomingo County is bounded by beginning at a point on the state line bounding on the State of Tennessee two miles east of the line between ranges eight and nine, east; thence east on said state line to the Tennessee River; thence with said line up the said river to the mouth of Bear creek, on the state boundary with the State of Alabama; thence southerly on the state boundary to the middle of township seven; thence west on section lines to the southwest corner of section fourteen, township seven, range nine, east; thence north on section lines to the southeast corner of section ten, township four, range nine, east; thence west on section lines to the southeast corner of section nine in the township last named; thence north on section lines to the northwest corner of said section ten; thence west to the southeast corner of section five, township four, range nine, east; thence north on sectional lines to the beginning. The county site is Iuka.

SOURCES: Codes, 1857, ch. 2, art 68; 1871, § 80; 1880, § 88; 1892, § 412; 1906, § 476; Hemingway's 1917, § 3897; 1930, § 3958; 1942, § 3093; Laws, Feb. 9, 1836.

§ 19-1-143. Tunica County.

Tunica County is bounded by beginning on the Mississippi River where the line between townships two and three, south, intersects the same; thence east on said township line to the line between ranges nine and ten, west of the Chickasaw meridian; thence south on said range line to where it intersects Coldwater River; thence down said river to where it is intersected by a line extended west from the center of township six; thence east to the range line between ranges nine and ten, west; thence to the southeast corner of township six, range ten, west; thence west to the southwest corner of township six, range ten, west; thence south to the southwest corner of township seven, range ten, west; thence west to the boundary between the Chickasaw and Choctaw cessions; thence northwest with said boundary to the Mississippi River; thence up said river, with its meanderings, to the beginning. The county site is Tunica.

SOURCES: Codes, 1857, ch. 2, art 77; 1871, § 81; 1880, § 89; 1892, § 413; 1906, § 477; Hemingway's 1917, § 3898; 1930, § 3959; 1942, § 3094; Laws, Feb. 9, 1836.

§ 19-1-145. Union County.

Union County is bounded by beginning at the northwest corner of township six, range one, east; thence east on the township line to the northwest corner of section one, township six, range five, east; thence south to the southwest corner of section one, township seven, range five, east; thence west on section lines to the southwest corner of section four, township seven, range five, east; thence south to the southwest corner of section nine, township eight, range five, east; thence west to the northwest corner of section eighteen, township eight, range five, east; thence south to the southwest corner of section nineteen, same township and range; thence west to the northwest corner of section thirty, township eight, range four, east; thence north to the northwest corner of section nineteen, in the same township; thence west to the meridian line; thence north to the beginning. The county site is New Albany.

SOURCES: Codes, 1871, § 82; 1880, § 90; 1892, § 414; 1906, § 478; Hemingway's 1917, § 3899; 1930, § 3960; 1942, § 3095; Laws, Apr. 7, 1870.

§ 19-1-147. Walthall County.

Walthall County is bounded by beginning on the Mississippi-Louisiana State line at the southwest corner of section thirty-six, township one, north, range nine, east; and run thence north along the west boundaries of sections thirty-six, twenty-five, twenty-four, thirteen, twelve and one, in townships one, two, three and four respectively of range nine, east, to the northwest corner of section one, in township four, north, range nine, east; thence east along the township line between townships four and five, north, to the northeast corner of section five in township four, north, range eleven, east; thence south along the east boundary of said section five to the northeast corner of the southeast quarter of said section; thence east along the half section line of section four, north, range eleven, east, to the northeast corner of the southeast quarter of said section four; thence south along the east boundary of section four to the southeast corner of said section; thence east along the south boundary of section three in township four, north, range eleven, east to the southeast corner of the southwest quarter of said section three; thence south along the half section line of section ten, township four, north, range eleven, east, to the center of said section ten; thence east along the half section lines of sections ten, eleven and twelve in township four, north, range eleven, east, to the southeast corner of the southwest quarter of the northwest quarter of said section twelve; thence north along the east boundary of the southwest quarter of the northwest quarter of said section twelve to the northeast corner of the said southwest quarter of the northwest quarter of said section twelve; thence east along the south boundary of the northeast quarter of the northwest quarter of said section twelve to the southeast corner of the northeast quarter of the northwest quarter of said section twelve; thence north along the half section line of said section twelve to the northeast corner of the northwest quarter of said section twelve; thence east along the north boundary line of said section twelve to the northeast corner of the same, this point being on the range line between ranges eleven and twelve, east; thence south along said range line seven miles to the northwest corner of section eighteen in township three, north, range twelve, east; thence east along the north boundary line of said section eighteen in said township three, north, range twelve east one-half mile to the northeast corner of the northwest quarter of said section eighteen; thence south along the half section line of sections eighteen, nineteen, thirty and thirty-one in township three, north, range twelve, east, four miles to the township line between townships two and three, north; thence east along said township line between townships two and three, one and one-half miles to the northeast corner of section five in township two, north, range twelve, east; thence south along the east boundaries of sections five, eight and seventeen in township two, north, range twelve, east, three miles to the southeast corner of said section seventeen; thence east along the north boundary line of sections twenty-one, twenty-two, twenty-three and twenty-four to the northeast corner of section twenty-four in township two, north, range twelve, east; thence south along the range line between ranges twelve and thirteen, one and one-half miles to the southwest corner of the northwest quarter of section thirty in township two, north, range thirteen, east; thence east along the half section line of section thirty to the center of said section; thence south along the half section line of sections thirty and thirty-one in township two, north, range thirteen, east, one and one-half miles to the township line between townships one and two; thence east along said township line one-half mile to the northeast corner of section six, township one, north, range thirteen, east; thence south along the east boundary of said section six one mile to the northwest corner of section eight in township one, north, range thirteen, east; thence east along the north boundary of sections eight, nine, ten, eleven and twelve in township one, north, range thirteen, east, five miles to the northeast corner of said section twelve; thence south along the range line between ranges thirteen and fourteen five miles, to the southeast corner of section thirty-six, township one, north, range thirteen, east, this point being on the Mississippi-Louisiana State line; thence west along said state line to the point of beginning. The county site is Tylertown.

SOURCES: Codes, Hemingway's 1917, § 3900; 1930, § 3961; 1942, § 3096; Laws, 1912, ch. 360.

§ 19-1-149. Warren County.

Warren County is bounded by beginning on the Mississippi River when the township lines between townships nine, range eight, west, and eighteen, range two, east, intersect the same; thence east on said township line to the southwest corner of township nine, range seven, west; thence south to the Yazoo River; thence up said river, with its meanderings, to the range line between ranges three and four, east; thence north to the southeast corner of township nine, range seven, west; thence east to the Yazoo River; thence up said river to the point at which it is intersected by the section line between sections sixteen and twenty-one, township nine, range five, west; thence east to the northeast corner of section twenty-two, township nine, range five, west; thence south to the northeast corner of section thirty-four, township nine, range five, west, thence east to the northeast corner of section thirty-six, township nine, range five, west; thence south to the southwest corner of section seven, township eight, range four, west; thence east to the northeast corner of section fifteen, township eight, range four, west; thence south to the southeast corner of the same section; thence east to the northeast corner of section twenty-four, township eight, range four, west; thence south to Big Black River; thence with said river to the Big Boguesha; thence with the Big Boguesha to the Little Boguesha; thence with the Little Boguesha to its junction with the Mississippi River; thence along the western boundary of the state to the beginning. The county site is Vicksburg.

SOURCES: Codes, 1871, § 83; 1880, § 91; 1892, § 415; 1906, § 479; Hemingway's 1917, § 3901; 1930, § 3962; 1942, § 3097; Laws, Feb. 9, 1826.

§ 19-1-151. Washington County.

Washington County is bounded by beginning on the Mississippi River, at a point where the line between townships nineteen and twenty intersects the same; thence east on said township line to the line between ranges five and six, west; thence south on said range line to the line between townships sixteen and seventeen; thence east on said township line to the center line of Sunflower River; thence in a southerly direction with the meanderings of Sunflower River and along its center line to the township line between townships fourteen and fifteen; thence west on said township line to the northwest corner of section three, township fourteen, range seven, west; thence south on section lines to the line between townships thirteen and fourteen, at the northwest corner of section three, township thirteen; thence west to the Mississippi River; thence up said river to the beginning. The county site is Greenville.

SOURCES: Codes, Hutchinson's 1848, ch. 3, art 2; 1857, ch. 2, art 33; 1871, § 84; 1880, § 92; 1892, § 416; 1906, § 480; Hemingway's 1917, § 3902; 1930, § 3963; 1942, § 3098; Laws, June 4, 1800.

§ 19-1-153. Wayne County.

Wayne County is bounded by beginning on the old Choctaw boundary line, where the line between ranges nine and ten crosses the same; thence easterly with said boundary line to the northwest corner of the Hiawanee reserve; thence direct to the northeast corner of said Hiawanee reserve; thence along said Choctaw boundary to the boundary line between the States of Alabama and Mississippi; thence south on said boundary line to the line between townships five and six, north; thence west on said township line to the line between ranges nine and ten, west; thence north on said range line to the beginning. The county site is Waynesboro.

SOURCES: Codes, 1871, § 85; 1880, § 93; 1892, § 417; 1906, § 481; Hemingway's 1917, § 3903; 1930, § 3964; 1942, § 3099; Laws, Dec. 21, 1809.

§ 19-1-155. Webster County.

Webster County is bounded by beginning at the northeast corner of section twelve, township nineteen, range eleven, east; thence west on the section line to a point where it crosses Big Black River; thence down said river, by the middle of the stream, to a point at which it is crossed by the township line between townships eighteen and nineteen, thence west on said township line to the range line between ranges seven and eight, east; thence north on said range line to the township line between townships twenty-one and twenty-two; thence east on said township line to the range line between ranges ten and eleven; thence north one mile; thence east on the section lines to the range line between ranges two and three, east of the Chickasaw basis; thence south on the western boundary of Clay County to the southwest corner of said county, at the southwest corner of section twenty-six, township twenty, range twelve, east; thence west on the section lines to the range line between ranges eleven and twelve, east; thence south to the beginning. The county site is Walthall.

This section shall in no way affect the present lines of Choctaw County.

SOURCES: Codes, 1880, § 83; 1892, § 418; 1906, § 482; Hemingway's 1917, § 3904; 1930, § 3965; 1942, § 3100; Laws, Apr. 6, 1874; Laws, 1944, ch. 428.

§ 19-1-157. Wilkinson County.

Wilkinson County is bounded by beginning at the mouth of the Homochitto River on the Mississippi River, thence, including Tansy Island, up said Homochitto River, with its meanderings, to the mouth of Foster's creek; thence southeasterly up said creek, with its meanderings to the line between ranges one and two, east; thence south on said range line to the boundary line between the States of Louisiana and Mississippi; thence west on said state boundary line to the Mississippi River; thence up said river, with its meanderings, to the beginning. The county site is Woodville.

SOURCES: Codes, 1871, § 86; 1880, § 94; 1892, § 419; 1906, § 483; Hemingway's 1917, § 3905; 1930, § 3966; 1942, § 3101; Laws, Jan. 30, 1802.

§ 19-1-159. Winston County.

Winston County is bounded by beginning at the northwest corner of township sixteen, range twelve, east; thence east on the township line to the northeast corner of township sixteen, range fourteen, east; thence south on the range line to the southeast corner of township thirteen, range fourteen, east; thence west on the township line to the northeast corner of section two, township twelve, range thirteen, east; thence south on the section line one-half mile; thence west to the line between sections three and four, same township; thence north on section line to the northwest corner of section three, in said township twelve, range thirteen; thence west on the township line to the southwest corner of township thirteen, range thirteen, east; thence north on the range line to the southeast corner of township thirteen, north of range twelve, east; thence west on the township line to the southwest corner of township thirteen, range ten, east; thence north on the range line to the southwest corner of township fifteen, range ten, east; thence east on the township line to the southeast corner of said township; thence north on the line between ranges ten and eleven to northeast corner of said township; thence east to the southeast corner of township sixteen, range eleven, east; thence north on the range line to the northeast corner of said township sixteen, range eleven, east, which is the beginning. The county site is Louisville.

SOURCES: Codes, 1857, ch. 2, art 51; 1871, § 87; 1880, § 95; 1892, § 420; 1906, § 484; Hemingway's 1917, § 3906; 1930, § 3967; 1942, § 3102; Laws, Dec. 23, 1833.

§ 19-1-161. Yalobusha County.

Yalobusha County is bounded by beginning at the northeast corner of township twenty-six, range three, east; thence east on township line between townships ten and eleven, west of the Chickasaw meridian, to the southwest corner of section thirty-four, township ten, range five, west; thence north along the east boundary of Panola County to the southwest corner of section twenty-two, township ten, range five, west; thence east twelve miles to the southwest corner of section twenty-two, township ten, range three, west; thence due south by the range line between ranges seven and eight, each of the Choctaw meridian, to the southeast corner of section twelve, township twenty-three, range seven, east; thence west on sectional lines to the southwest corner of section ten, township twenty-three, range five, east; thence north on sectional lines to the line between townships twenty-three and twenty-four; thence west on said township line to the line between ranges three and four, east; thence north on said range line to the beginning. The county sites are Coffeeville and Water Valley.

SOURCES: Codes, 1857, ch. 2, art 54; 1871, § 88; 1880, § 96; 1892, § 421; 1906, § 485; Hemingway's 1917, § 3907; 1930, § 3968; 1942, § 3103; Laws, Dec. 23, 1833.

§ 19-1-163. Yazoo County.

Yazoo County is bounded by beginning at the northwest corner of township thirteen, range one, west; thence on a direct line southeasterly to Bole's ferry, in section twenty-two, township twelve, range three, east, on Big Black River; thence down said river, with its meanderings, to the line between ranges three and four, west; thence north on said line to the northeast corner of section twenty-four, township eight, range four, west; thence west to the southwest corner of section fourteen in same township; thence north to the northwest corner of the same section, fourteen; thence west to the southwest corner of section seven, township eight, range four, west; thence to the northeast corner of section thirty-six, township nine, range five, west; thence to the northwest corner of section thirty-five; thence north to the northeast corner of section twenty-two in same township; thence west to the Yazoo River on the line between sections sixteen and twenty-one; thence up said river to the mouth of Sunflower River; thence up said river, with its meanderings, to the southwest corner of township twelve, range five, west; thence in a direct line to the northeast corner of said township; thence east along the south boundary line of township thirteen, north, range four, west, and township thirteen, north, range three, west to the southeast corner of township thirteen, north, range three, west; thence north along the east line of township thirteen, north, range three, west, to the northeast corner of same; thence east along the south line of township fourteen, north, range two, west, to the southwest corner of section thirty-six, township fourteen, north, range two, west; thence north along the line between sections thirty-five and thirty-six, township fourteen, north, range two, west, to the center line of the Yazoo River; thence down said river with its meanderings to the point of beginning. The county site is Yazoo City.

SOURCES: Codes, 1857, ch. 2, art 23; 1871, § 89; 1880, § 97; 1892, § 422; 1906, § 486; Hemingway's 1917, § 3908; 1930, § 3969; 1942, § 3104; Laws, Jan. 21, 1823.

CHAPTER 2

County Government Reorganization Act

SEC.
19-2-1. Short title.
19-2-3. Creation of countywide system of road administration.
19-2-5. Adoption of countywide system of road administration by election; by resolution; subsequent elections; petition for election to adopt or discontinue system.
19-2-7. Assets, liabilities and indebtedness of road districts assumed by county after adoption of system; no new obligations to be authorized to districts; "road districts" defined.
19-2-9. Countywide personnel administration for county employees; exemption of certain employees.
19-2-11. State Auditor to determine whether counties have implemented countywide system of road administration, central purchasing system, inventory control system, and countywide personnel administration; notice to counties; certificate of noncompliance; penalties; appeals.
19-2-12. Notice by State Auditor of supervisor's noncompliance with provisions of § 19-2-3; initiation of civil proceedings; penalties.
19-2-13. Inapplicability of certain Code sections to countywide system of road administration.

§ 19-2-1. Short title.

This chapter shall be known and may be cited as the "County Government Reorganization Act of 1988."

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 1, eff from and after passage (approved August 16, 1988).

ATTORNEY GENERAL OPINIONS

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 19-2-3. Creation of countywide system of road administration.

(1) Unless otherwise exempted under the provisions of Section 19-2-5, from and after October 1, 1989, each county in the State of Mississippi shall operate on a countywide system of road administration, there shall be no road districts, separate road districts or special road districts in any county, supervisors districts shall not act as road districts, and the construction and maintenance of roads and bridges in each county shall be on a countywide basis so that (a) the distribution and use of all road and bridge funds available to the county or any district thereof, (b) the planning, construction and maintenance of county roads and bridges, (c) the purchase, ownership and use

of all road and bridge equipment, materials and supplies, (d) the employment and use of the road and bridge labor force, and (e) the administration of the county road department shall be on the basis of the needs of the county as a whole, as determined by the board of supervisors, without regard to any district boundaries.

(2) Any references in any statute to a road district, separate road district or special road district, or to a supervisors district acting as a road district, shall, as to any county which is required to operate on a countywide system of road administration, be construed to mean the county as a whole, if such construction is possible within the context of the statute; otherwise, any such reference shall have no force or effect with regard to any such county.

The State Auditor may, pursuant to a request from a board of supervisors in a resolution duly adopted by the board and spread upon its minutes, provide to the requesting board of supervisors his estimates of the cost to the county of implementing and complying with the County Government Reorganization Act of 1988.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 2, eff from and after March 3, 1989 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's Note — The United States Attorney General interposed no objection to the amendments proposed by subsections (1) and (2) of Section 2 of Chapter 14, 1988 Ex Sess Laws on September 1, 1988, and to subsections (3)-(5) of Section 2 of Chapter 14, 1988 Ex Sess Laws on March 3, 1989.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Adoption or rejection of the countywide system by county voters, see § 19-2-5.

Assumption of all debts, liabilities and assets of road districts by the county in which the districts are located after adoption of the countywide system, see § 19-2-7.

Requirement that boards of supervisors that operate on a countywide system of road administration adopt and maintain a system of countywide personnel administration for all county employees, see § 19-2-9.

Duties of the state auditor [now Executive Director of the Department of Finance and Administration] with respect to the implementation of a countywide system of road administration pursuant to this section, see § 19-2-11.

Employment, qualifications, general duties, terms of employment, compensation, duties and responsibilities of County Administrators, as affected by this section, see §§ 19-4-1 et seq.

Application of this section to the acquisition of certain real property by boards of supervisors, see § 19-7-1.

Application of this section to the authority of boards of supervisors to issue county bounds, see § 19-9-3.

Application of this section to the preparation and publication of the annual county budget, see § 19-11-7.

Application of this section to the purchase of road equipment by boards of supervisors, see § 19-13-17.

Application of this section to the apportionment of taxes by the state tax commission, see § 27-5-101.

Application of this section to the distribution of motor vehicle privilege taxes, see § 27-19-159.

Application of this section to the distribution of oil severance taxes, see § 27-25-505.

Application of this section to the distribution of natural gas severance taxes, see § 27-25-705.

Application of this section to the regulation of the use of county roads, see § 65-7-37.

Application of this section to the posting of notices of weight and tire restrictions applicable to county roads, see § 65-7-49.

Application of this section to the authorization to close roads while under construction, see § 65-7-53.

Application of this section to the authority of the board of supervisors to construct or maintain certain state highways within or without any municipality or road districts, see § 65-7-81.

Application of this section to the authority of the board of supervisors to purchase or lease land for stations for public road projects, see § 65-7-91.

Application of this section to the acquisition of land containing road building material for use in road construction and maintenance, see § 65-7-99.

Application of this section to the appropriation of nearby timber and gravel for use in bridge and road construction, see § 65-7-101.

Application of this section to the necessity of plans and specifications for letting of bids for road and bridge construction, see § 65-7-105.

Application of this section to the authority of the board of supervisors, see § 65-7-115.

Application of this section to the inspection of roads by members of the board and the preparation of four-year construction and maintenance plans, see § 65-7-117.

Application of this section to the amount of money available for rural road and bridge construction, see § 65-11-45.

Application of this section to the selection of rural roads and bridges to be constructed or improved, see § 65-11-47.

Application of this section to the letting of contracts for rural road and bridge construction, see § 65-11-51.

Application of this section to the raising of funds by boards of supervisors for road and bridge construction, see § 65-15-1.

Application of this section to the use of gasoline taxes to pay road bond issues, see § 65-15-9.

Application of this section to provisions not requiring boards of supervisors to set aside gasoline taxes for payment of road bonds where sufficient funds are available, see § 65-15-11.

Application of this section to a provision providing that use of gasoline taxes to pay road bonds does not affect other financing for other road construction, see § 65-15-13.

Application of this section to the authorization to transfer the balance in sinking funds after the payment of road construction bonds to road and bridge funds, see § 65-15-19.

Application of this section to the refund of certain excess road construction funds to municipalities, see § 65-15-21.

Application of this section to the employment of a county engineer, see § 65-17-201.

Application of this section to the purchase of machinery and equipment for soil conservation purposes, see § 69-27-209.

ATTORNEY GENERAL OPINIONS

A board of supervisors of a countywide road system may not agree to a cost sharing arrangement with non-subdivision owners similar to that permitted by §

65-19-83 for separate road district counties. Brown, Oct. 24, 2003, A.G. Op. 03-0477.

A county board of supervisors operating under the unit system of road administration cannot agree among themselves that road construction will be based upon each district being allocated a specific amount of mileage, with the decision of what roads to be constructed being left to the discretion of the supervisor of that district, since there are no districts in this form of road administration. Moorehead, Dec. 8, 2006, A.G. Op. 06-0595.

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

Which county roads require major maintenance is established in a four-year plan built on annual road inspections by the board of supervisors, and such policy is to be implemented by the county road manager. The board of supervisors may change or modify any action of the road manager by an official order approved by a majority vote of the board, reflected in the minutes, but no individual supervisor has the authority to advise or direct the road manager to perform major maintenance. White, March 23, 2007, A.G. Op. #07-00118, 2007 Miss. AG LEXIS 122.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 44, 57, 62, 66, 67, 71-133, 194.

§ 19-2-5. Adoption of countywide system of road administration by election; by resolution; subsequent elections; petition for election to adopt or discontinue system.

(1) In the general election held on the first Tuesday after the first Monday of November 1988, an election on the question of operation of the county on a countywide system of road administration shall be held in each county of the state. The ballot in such election shall have printed thereon the question "Do you want to require the county to operate under the countywide system of road administration?" followed thereafter, on separate lines, with the word "YES" and the word "NO" and with appropriate boxes adjacent thereto in which the voters may indicate their preference.

(2) The results of the elections held on the first Tuesday after the first Monday of November 1988 concerning the question of operation of the county on a countywide system of road administration as set out in subsection (1) of this section shall be forwarded by each county circuit clerk to the Secretary of State, within fifteen (15) days of such election. The Secretary of State shall certify these election results after subsection (1) of this section has been precleared under Section 5 of the Voting Rights Act of 1965, as amended and extended.

(3) If a majority of the qualified electors participating in the election under subsection (1) or (2) of this section vote in favor of requiring the county to operate under the countywide system of road administration, the county shall not be exempt from and shall be subject to the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the

countywide system of road administration beginning October 1, 1989. If, on the other hand, a majority of the qualified electors participating in the election vote against requiring the county to operate under the countywide system of road administration, the county shall be exempt from the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the countywide system of road administration beginning October 1, 1989, and the board of supervisors of that county may construct and maintain the county roads and bridges on a road district or beat system in accordance with any applicable provisions of general law or may, in its discretion and at any time, by resolution duly adopted and entered on its minutes, require the county to operate on the countywide system of road administration in accordance with Section 19-2-3.

(4) If in any election held in a county under subsection (1) or subsection (2) of this section a majority of the qualified electors participating in the election vote against requiring the county to operate under the countywide system of road administration, then an election on such question may again be held at the November general election in 1990 or at a regularly scheduled November general election in any year thereafter, in any such county in which the board of supervisors has not adopted a resolution as provided in subsection (3) of this section and put into operation the countywide system of road administration in accordance with Section 19-2-3, upon a petition filed with the board of supervisors and signed by at least fifteen percent (15%) or one thousand five hundred (1,500) of the qualified electors of that county, whichever is the lesser, asking for an election to determine whether to require the county to operate under the countywide system of road administration. Upon such petition being filed the board of supervisors shall order an election to be held on the question at the next November general election more than sixty (60) days from the filing of the petition. Nothing in this section shall authorize or permit the calling or holding of any such election in a county more often than once every two (2) years. The question to be presented to the electors at such election shall be in the same manner and form as provided in subsection (1) of this section. If a majority of the qualified electors participating in any such election vote in favor of requiring the county to operate under the countywide system of road administration, then beginning October 1 of the next year following such election, the county shall not be exempt from and shall be subject to the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the countywide system of road administration. If, on the other hand, a majority of the qualified electors participating in any such election vote against requiring the county to operate under the countywide system of road administration, the county shall be exempt from the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the countywide system of road administration, and the board of supervisors of that county may construct and maintain the county roads and bridges on a road district basis, a beat system or any other system authorized by any applicable provisions of general law, or may, in its discretion and at any time, by resolution duly adopted and entered on its minutes, require the county to

operate under the countywide system of road administration in accordance with Section 19-2-3.

(5) Once a county begins to operate under the countywide system of road administration in accordance with Section 19-2-3, whether as a result of an election held under this section or as a result of a resolution adopted by the board of supervisors as provided in subsection (3) or subsection (4) of this section, then an election on such question may again be held in any such county at the November general election in 1992 or at a regularly scheduled November general election in any year thereafter at which members of the boards of supervisors and state officials are elected, upon a petition filed with the board of supervisors and signed by at least fifteen percent (15%) or one thousand five hundred (1,500) of the qualified electors of that county, whichever is the lesser, asking for an election to determine whether to require the county to continue to operate under the countywide system of road administration. The question to be presented to the electors at such election shall be in the same manner and form as provided in subsection (1) of this section. If a majority of the qualified electors participating in any such election vote in favor of requiring the county to operate under the countywide system of road administration, then the county shall not be exempt from and shall continue to be subject to the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the countywide system of road administration. If, on the other hand, a majority of the qualified electors participating in any such election vote against requiring the county to operate under the countywide system of road administration, then beginning October 1 of the next year following such election, the county shall be exempt from the provisions of Section 19-2-3 and all other provisions of law requiring counties to operate under the countywide system of road administration, and the board of supervisors of that county may construct and maintain the county roads and bridges on a road district basis, a beat system or any other system authorized by any applicable provisions of general law, or may, in its discretion and at any time, by resolution duly adopted and entered on its minutes, require the county to operate under the countywide system of road administration in accordance with Section 19-2-3.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 3; Laws, 1992, ch. 305, § 1, eff from and after June 17, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Creation of countywide systems of road administration, see § 19-2-3.

ATTORNEY GENERAL OPINIONS

A board of supervisors may not agree to a cost sharing arrangement with subdivision owners whose lots adjoin private gravel roads for the paving of the private roads. The subdivision owners must bear the entire cost of paving their private roads even though those private roads subsequently tie into public, county-maintained paved roads. Brown, Oct. 24, 2003, A.G. Op. 03-0477.

§ 19-2-7. Assets, liabilities and indebtedness of road districts assumed by county after adoption of system; no new obligations to be authorized to districts; "road districts" defined.

(1) Any road district bonds and any other indebtedness and liabilities of a road district which are outstanding on the date of a county's implementation of a countywide system of road administration, as described in Section 19-2-3, shall become obligations of the county as a whole. Any sum being held in a road district fund to repay principal and interest on such bonds shall be deposited into a special county fund to be used toward amortization of such bonds. If any covenants in any road district bonds require that the bonded indebtedness be retired by a tax levy only upon the property within the road district for which the bonds were issued, the board of supervisors shall retire such bonded indebtedness by a tax levy only upon the property in the part of the county which was within the road district immediately before the date of the county's implementation of the countywide system of road administration.

(2) Any real or personal property of a road district shall become the property of the county in which the district was located immediately before the date of the county's implementation of the countywide system of road administration.

(3) From and after the date on which the board of supervisors receives certification of the results of an election which require that the county operate on a countywide system of road administration, the board of supervisors of the county shall not issue or authorize to be issued any bonds, notes or other obligations for the benefit of a road district unless prior to the date of certification of the election to the board, a declaration of intent to issue such bonds, notes or other obligations has been duly adopted and entered on the minutes of the board of supervisors of the county and the first publication of such declaration of intent has been completed in the manner provided by law.

(4) The term "road district" as used in this section shall also include separate road districts, special road districts and supervisors districts acting as road districts.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 4, eff from and after passage (approved August 16, 1988).

§ 19-2-9. Countywide personnel administration for county employees; exemption of certain employees.

(1) The board of supervisors of each county which is required to operate on a countywide system of road administration as described in Section 19-2-3 shall adopt and maintain a system of countywide personnel administration for all county employees other than those employees subject to subsection (2) of this section. The personnel system shall be implemented and administered by the county administrator. Such personnel system may include, but not be limited to, policies which address the following: hiring and termination of employees, appeal and grievance procedures, leave and holidays, compensa-

tion, job classification, training, performance evaluation and maintenance of records. All employees of the county shall be employees of the county as a whole and not of any particular supervisor district. However, any employee which the county administrator is authorized to employ may be terminated at the will and pleasure of the administrator without requiring approval by the board of supervisors.

The board of supervisors of each county shall spread upon its minutes all its actions on personnel matters relating to hiring or termination and such other personnel matters deemed appropriate by the board.

(2) The elected officials of any county described in subsection (1) of this section, other than members of the board of supervisors, who are authorized by law to employ shall adopt and maintain a system of personnel administration for their respective employees or shall adopt the system of personnel administration adopted by the board of supervisors. The personnel system adopted and any amendments thereto shall be filed with the board of supervisors.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 9, eff from and after October 1, 1989.

Cross References — Duties of the state auditor [now Executive Director of the Department of Finance and Administration] with respect to the implementation of a countywide system of personnel administration as required by this section, see § 19-2-11.

ATTORNEY GENERAL OPINIONS

County sheriff's department, which has adopted its own personnel policies pursuant to Miss. Code Section 19-2-9, would still be governed by laws applicable to county governments as to personnel matters; department is not considered state agency or subdivision of state government. Pope, Apr. 14, 1993, A.G. Op. #93-0069.

Under Section 19-2-9, the supervision and direction of county employees is left to the county administrator. Bradley, March 15, 1996, A.G. Op. #96-0085.

A county board of supervisors may exercise direct supervision and control over the boards and other divisions of county government if it chooses not to delegate and assign those duties to the county administrator. Yancey, April 24, 1998, A.G. Op. #98-0186.

If a county youth court has adopted a separate system of personnel administration, the countywide system is inapplicable to youth court employees, including employment practices; however, if the county youth court has not adopted a separate system, its employees are subject to the countywide system, including employment practices. Meadows, May 12, 2000, A.G. Op. #2000-0238.

The manner and method by which the elected officials promulgate personnel policies is not set forth in the statute; the only requirement is that after the elected official adopts a system of personnel administration, it must be filed with the board of supervisors. McWilliams, June 7, 2002, A.G. Op. #02-0329.

Although a county administrator has the authority to hire and terminate those county employees designated by the board of supervisors, there is no statutory authority for an administrator to abolish a personnel position that has been designated by the board. Brooks, Mar. 26, 2004, A.G. Op. 04-0108.

Assuming adequate funds are budgeted for the purpose, a sheriff may pay reasonable membership fees for employees to attend a fitness center so that they may achieve and maintain the standard of physical fitness required by written personnel policies. Sollie, July 22, 2005, A.G. Op. 05-0341.

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 19-2-11. State Auditor to determine whether counties have implemented countywide system of road administration, central purchasing system, inventory control system, and countywide personnel administration; notice to counties; certificate of noncompliance; penalties; appeals.

It shall be the duty of the State Auditor to examine annually the books, records, accounts and other documents of each county and to perform such investigations as may be necessary to determine (a) if the county has actually adopted and put into operation the practice of constructing and maintaining all of the roads and bridges of the county as a unit, when and as required in Section 19-2-3, with all of the construction and maintenance machinery and other equipment, construction and maintenance funds and other construction and maintenance facilities available to the county for highway use placed under the administration of the county road manager for use in any part of the county regardless of beat lines and to the best interest of the county as a whole, (b) if the county has established and implemented, and is maintaining, a central purchasing system for all equipment, heavy equipment, machinery, supplies, commodities, materials and services as required by Section 31-7-101, (c) if the county has established and implemented, and is maintaining, the inventory control system required by Section 31-7-107, and (d) if the county has adopted and implemented a system of countywide personnel administration as required by Section 19-2-9. If upon his examination the Auditor determines that a county is not in substantial compliance with the requirements described in (a), (b), (c) and (d) above, he shall file a certified written notice with the clerk of the board of supervisors notifying the board of supervisors of his intention to issue a certificate of noncompliance to the State Tax Commission and to the Attorney General thirty (30) days immediately following the date of the filing of such notice unless within such period the county substantially complies with the requirements described in (a), (b), (c) and (d) above. If after thirty (30) days from the giving of the notice the county, in the opinion of the State Auditor, has not substantially complied with the requirements described in (a), (b), (c) and (d) above, the Auditor shall issue his certificate of noncompliance to the board of supervisors, State Tax Commission and the Attorney General. Thereafter, the State Tax Commission shall withhold all allocations and payments to the county that would otherwise be payable under Sections 27-65-75(4), 27-5-101(b)(vi) and 65-33-45, until such time as the Tax Commission and the Attorney General receive from the State Auditor written notice of cancellation of the certificate of noncompliance. However, all of such funds as are withheld from the county during the first ninety (90) days following issuance of a certificate of noncompliance under this subsection shall accrue to the account of that county and shall be subsequently allocated and paid to that county as otherwise provided by law if within such ninety-day period the board of supervisors, the State Tax Commission and the Attorney General receive written notice from the State Auditor of cancellation of the certificate of noncompliance. The State Auditor shall not unreasonably delay the issuance of a written notice of cancellation of a certificate of noncompliance but shall promptly issue a written notice of cancellation of certificate of noncompliance upon an affirmative showing by the county that it has come into substantial compliance. If the State Auditor has not issued a written notice of cancellation of the certificate of noncompliance within ninety (90) days after issuance of a certificate of noncompliance, all such funds as have been withheld and accrued to the county during such period, along with all monthly allocations which accrue but are withheld from the county following such ninety-day period for failure of the county to comply, shall be forfeited and reallocated among all other counties in the state that are eligible for such funds in accordance with the same formula for calculating original allocations among counties.

There shall be no administrative appeal from any action of the State Auditor under this subsection in issuing or failing to issue any certificate of noncompliance or notice of cancellation of a certificate of noncompliance; however, if a civil action is filed for and on behalf of any county which is aggrieved by any action of the State Auditor under this section within ninety (90) days after issuance to the county of a certificate of noncompliance, any money as would otherwise be reallocated to other counties under this section shall be held in escrow pending final determination of the civil action.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 59, eff from and after October 1, 1989.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

ATTORNEY GENERAL OPINIONS

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 19-2-12. Notice by State Auditor of supervisor's noncompliance with provisions of § 19-2-3; initiation of civil proceedings; penalties.

(1) If upon audit, examination or investigation, the State Auditor determines that an individual member of a county board of supervisors is not in substantial compliance with the provisions of law that require the county to operate on a countywide system of road administration, as described in Section 19-2-3, then the State Auditor shall give, by United States Certified Mail, return receipt requested, written notification to the supervisor of such noncompliance. If within thirty (30) days after receipt of the notice, such supervisor, in the opinion of the State Auditor, remains in noncompliance, the Auditor may institute civil proceedings in the chancery court of the county in which the supervisor serves. The court, upon hearing, shall decide the issue and, if it determines that such supervisor is not in substantial compliance, shall order the supervisor to immediately and thereafter comply. Violations of any order of the court shall be punishable as for contempt. In addition, the court, in its discretion, may impose a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) upon the supervisor, for which he shall be liable in his individual capacity, for any such noncompliance that the court determines as intentional or willful.

(2) The provisions of this section shall not be construed to prevent the State Auditor, the Attorney General or any other public official, as otherwise authorized by law, from initiating or commencing civil actions or criminal proceedings by or on behalf of the state or any county or political subdivision for the misappropriation or the unlawful use, taking or conversion of public funds or public property.

SOURCES: Laws, 1999, ch. 355, § 1, eff from and after July 1, 1999.

ATTORNEY GENERAL OPINIONS

A member of the board of supervisors violates the statute if he or she instructs the county road manager or county administrator to hire, terminate, transfer, or demote a county employee under their jurisdiction. Brooks, July 28, 2000, A.G. Op. #2000-0339.

There is no statute authorizing a private citizen to file suit against a member of the board of supervisors for a violation of the statute. Brooks, July 28, 2000, A.G. Op. #2000-0339.

The State Auditor ultimately investigates violations of the statute; the office of the Attorney General works closely with the State Auditor to assist with any investigative needs that may arise. Brooks, July 28, 2000, A.G. Op. #2000-0339.

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 19-2-13. Inapplicability of certain Code sections to countywide system of road administration.

Sections 65-15-17, 65-17-3, 65-17-5, 65-17-7, 65-17-101, 65-17-103, 65-17-105, 65-17-107, 65-19-1, 65-19-3, 65-19-5, 65-19-7, 65-19-9, 65-19-11, 65-19-13, 65-19-15, 65-19-17, 65-19-19, 65-19-21, 65-19-23, 65-19-25, 65-19-27, 65-19-29, 65-19-31, 65-19-33, 65-19-35, 65-19-37, 65-19-39, 65-19-41, 65-19-43, 65-19-45, 65-19-47, 65-19-49, 65-19-51, 65-19-53, 65-19-55, 65-19-57, 65-19-59, 65-19-61, 65-19-63, 65-19-65, 65-19-67, 65-19-69, 65-19-71, 65-19-73, 65-19-75, 65-19-77, 65-19-79, 65-19-81, 65-19-83, 65-19-85, 65-19-87, 65-21-19 and 65-21-21, Mississippi Code of 1972, which provide for the creation and procedures of road districts composed in whole or in part of one (1) or more than one (1) supervisors district, for the use of special or general road funds by the boards of supervisors, for defraying the expenses of constructing bridges connecting road districts, for the employment of county road accountants, and for compensation for road commissioners employed by certain counties, shall not be applicable to and shall be of no force or effect with regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 62, eff from and after October 1, 1989.

CHAPTER 3

Board of Supervisors

In General 19-3-1
County Cooperative Service District 19-3-101

IN GENERAL

Sec.
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19-3-81. Power of board to authorize sheriff to operate inmate canteen facilities; inmate canteen fund.
19-3-83. Authority to adopt ordinances for the regulation of transient vendors.
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§ 19-3-1. Districts and boundaries; election of supervisors.

[Effective until the date Laws of 2012, ch. 353, is effectuated under the Voting Rights Act of 1965, as amended and extended, this section will read:]

Each county shall be divided into five (5) districts, with due regard to equality of population and convenience of situation for the election of members of the boards of supervisors, but the districts as now existing shall continue until changed. The qualified electors of each district shall elect, at the next general election, and every four (4) years thereafter, in their districts one (1) member of the board of supervisors. The board, by a three-fifths (⅗) vote of all members elected, may at any time, change or alter the districts, the boundaries to be entered at large in the minutes of the proceedings of the board. Provided, however, that such changed boundaries shall in as far as possible conform as to natural, visible artificial boundaries, such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation, except county lines and municipal corporate limits.

In the event the boundaries of the districts are changed or altered by order of the board of supervisors as hereinabove provided, the order so doing shall be published in a newspaper having general circulation in the county once each week for three (3) consecutive weeks.

[Effective from and after the date Laws of 2012, ch. 353, is effectuated under the Voting Rights Act of 1965, as amended and extended, this section will read:]

Each county shall be divided into five (5) districts, with due regard to equality of population and convenience of situation for the election of members of the boards of supervisors, but the districts as now existing shall continue until changed. The qualified electors of each district shall elect, at the next general election, and every four (4) years thereafter, in their districts one (1) member of the board of supervisors. Subject to the provisions of Section 23-15-285, the board, by a three-fifths (3/5) vote of all members elected, may change the districts, the boundaries to be entered at large in the minutes of the proceedings of the board. Provided, however, that such changed boundaries shall in as far as possible conform as to natural, visible artificial boundaries, such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation, except county lines and municipal corporate limits.

If the boundaries of the districts are changed by order of the board of supervisors as provided in this section, the order shall be published in a newspaper having general circulation in the county once each week for three (3) consecutive weeks.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (2); 1857, ch. 59, arts 1, 2; 1871, §§ 1348, 1349; 1880, §§ 2129, 2130; 1892, § 272; 1906, § 291; Hemingway's 1917, § 3663; 1930, § 195; 1942, § 2870; Laws, 1920, ch. 298; Laws, 1930, ch 41; Laws, 1932, ch. 188; Laws, 1956, ch 180; Laws, 1966, ch. 290, § 1; Laws, 1968, ch. 564, § 1; Laws, 1971, ch. 493, § 1; Laws, 1980, ch. 425, § 1; Laws, 2012, ch. 353, § 2, eff ________ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 1980, ch. 425, § 5, provides as follows:

"SECTION 5. Section 2870, Mississippi Code of 1942, as it existed prior to November 1, 1964, is hereby repealed."

Laws of 2012, ch. 353, §§ 3 and 4 provide:

"SECTION 3. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendment Notes — The 2012 amendment rewrote the third sentence of the first paragraph; inserted "in this section" following "board of supervisors as provided" in the second paragraph and made minor stylistic changes.

Cross References — Jurisdiction and selection of board of supervisors, see Miss. Const. Art. 6, § 170.

Signing petitions personally by petitioners, see § 1-3-75.

Provision that members of boards of supervisors shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291.

Provisions prohibiting boards of supervisors or members thereof from employing excess numbers of highway workers during certain months in years in which a general primary election is to be held, and prohibiting excessive expenditures during those months, see § 23-15-881.

JUDICIAL DECISIONS

1. In general.

Primary claim advanced by plaintiff in state court action, that voting malapportionment which allegedly violated one-person, one-vote standard guaranteed by Article 3, Section 14, was sufficient to stand as independent ground for challenging election procedure, and federal issue under Voting Rights Act could collaterally attach to such claim. Republican Party v. Adams County Election Comm'n, 775 F. Supp. 978 (S.D. Miss. 1991).

Supervisors' plan for the reapportionment of voting districts for the election of county officials by single-member districts in Hinds County, Mississippi is unconstitutional since it will have the effect of perpetuating the denial of blacks to the political process proven to have existed before the adoption of the plan where the plan fragmented a geographically concentrated minority voting community in a way that tended to dilute the voting strength of the minority. Kirksey v. Board of Supvrs., 554 F.2d 139 (5th Cir. 1977), cert. denied, 434 U.S. 968, 98 S. Ct. 512, 54 L. Ed. 2d 454 (1977), on remand, 468 F. Supp. 285 (S.D. Miss. 1979).

While trial court properly determined that at-large election of county supervisors in which each candidate was required to be resident of one of five grossly malapportioned districts was violative of one man-one vote rule, it erred in postponing the granting of relief for the four year period of the term of office of supervisors who were to be elected some five months after date of its order; supervisors elected at regularly scheduled election shall hold office pending submission and approval of adequate redistricting plan and election of supervisors thereunder. Keller v. Gilliam, 454 F.2d 55 (5th Cir. 1972).

A Mississippi county governed for 100 years by a board of supervisors consisting of the supervisors of each of the county's five constituent towns, leading to a local governmental structure in which overlapping public services are provided by the towns and the county working in close cooperation, but malapportioned because of population variations among the towns, is not unconstitutionally reapportioned by a districting plan following town lines, giving one county legislator to the county's smallest town, and determining the number of legislators for each other town by the number of times its population exceeds the population of the smallest town, even though the result is an 11.9 percent deviation from voting equality. Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971).

Where the citizens of a county in Mississippi commenced a class action to require the county board of supervisors to redistrict the county, and later moved to dismiss their class action on the basis that they then preferred that the court order the holding of elections on an at-large basis, the court acted within its discretion in denying the motion to dismiss and in enjoining the members of the board to divide the county into 5 districts with nearly equal population, since a federal chancellor possess the discretion to require the use of such a device in lieu of or as an alternative to forced proportional redistricting in order to achieve compliance with the one-man, one-vote constitutional command. Sheffield v. Itawamba County Bd. of Supvrs., 439 F.2d 35 (5th Cir. 1971).

Where existing malapportioned county supervisors districts had been declared invalid and the case had been remanded to the trial court for further proceedings expeditiously conducted, the trial court erred in failing to explore the possibility of conducting new elections without waiting for the expiration of the terms of the supervisors holding office. Taylor v. Monroe County Bd. of Supvrs., 421 F.2d 1038 (5th Cir. 1970).

The word "now," as it appeared in the paragraph of Code 1942, § 2870 providing that the section should not be construed to affect any supervisor now holding office, meant the year of the passage of the act. Taylor v. Monroe County Bd. of Supvrs., 421 F.2d 1038 (5th Cir. 1970).

County board of supervisors' order, pursuant to 1966 amendment to Code 1942, § 2870, directing the election of county supervisors by the county at large instead of by districts constituted a change in procedure, where in all previous elections supervisors had been elected on a district basis, and the board's order was ineffective and unenforceable in absence of the approval secured from either the attorney general of the United States or the United States District Court for the District of Columbia as required by § 5 of the Voting Rights Act of 1965 as amended. Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971).

Where county board of supervisors' order, pursuant to 1966 amendment to Code 1942, § 2870, directing the election of county supervisors by the county at large instead of by districts constituted a change in procedure, it could not be successfully argued that the failure of the United States Attorney General to object to the at-large elections in 1967, when his office sent observers into Leflore County to observe the elections first hand and they made no objections to the change procedure, constituted acquiescence tantamount to an implied approval under § 5 of the Voting Rights Act of 1965, as amended. Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971).

Since there had been no showing that anyone had previously requested the redistricting of the malapportioned supervisors districts, and there was no showing that black voters would be prejudiced by the at-large election, then, notwithstanding the fact that the change in election procedure whereby supervisors were elected by the county at large instead of by districts was ineffective because of the failure to secure the requisite approval pursuant to § 5 of the Voting Rights Act of 1965, as amended, the court would authorize the at-large election subject to submission of a redistricting plan which would bring population disparities in districts to within constitutionally acceptable ratios. Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971).

Where federal court permitted the election of supervisors by the county at large instead of by districts notwithstanding that the change in election procedure had not been approved pursuant to § 5 of the Voting Rights Act of 1965, as amended, but the permission to hold the election was subject to the submission of a redistricting plan which would bring the population disparities in the supervisors districts within constitutionally acceptable ratios, supervisors elected at the pending election would serve only for the period of time necessary for the arrangement of a new election and until their successors had been legally chosen and qualified. Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971).

Order of county board of supervisors directing election of supervisors by vote from county at large, rather than by district, under authority of 1966 amendment to this section [Code 1942, § 2870], constituted change in voting standard, practice, or procedure requiring approval under § 5 of Voting Rights Act (42 USCA § 1973c) and was without effect pending compliance with that act; scheduled at-large election from presently malapportioned districts may proceed as scheduled, but supervisors so elected shall serve only provisionally, and for period of time needed to formulate and submit to court plan for redistricting which will bring population disparities to within constitutionally acceptable ratios and to arrange for new, special election to choose their successors. Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971).

A petition filed by electors against the board of supervisors of a county, requesting an election to decide the issue as to whether the boundary lines of the districts of the county supervisors should be changed "or whether the supervisors should run countywide" was fatally defective, as presenting an alternative action not authorized by the statute. Sims v. Board of Supvrs., 234 So. 2d 639 (Miss. 1970).

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in force or effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 2870], authorizing the board of supervisors of each county to adopt an order providing that all board members be elected at large by all qualified voters of the county. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969).

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 2870], and approval of that amendment cannot be implemented until the approval of the attorney general of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969).

In view of the fact that the attorney general of the United States, by letter dated May 21, 1969, advised the attorney general of Mississippi that an objection was interposed to the implementation of the 1966 and 1968 amendments to this section [Code 1942, § 2870], these amendments may not be implemented and are not presently in force. (Section 5 of the Voting Rights Act of 1965, 42 USC § 1973c.) Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

The board of supervisors of Washington County does not have statutory power or authority to provide for or order at-large elections of its members. Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

The board of supervisors of Washington County should be required to change and/or alter the board of supervisors' districts of the county in such manner as will provide equality of population among the districts as of the time the change or alteration is made. Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

The responsibility for changing and altering supervisors' districts rests upon the board, and the board should accept this responsibility and come forward with a plan which makes constitutional standards; should the board fail to come forward with such a plan the district court may consider alternative plans presented by others. Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

The rule requiring equal apportionment must be held to apply to a governing body which has the broad powers, duties, and responsibilities of the Mississippi county board of supervisors, and when the right to an equal voice in selecting the members of that body is diluted and denied by gross misapportionment, the Fourteenth Amendment affords an avenue of relief. Dyer v. Rich, 259 F. Supp. 741 (N.D. Miss. 1966).

Where one supervisor's district of a county contained over 63 percent of the entire population of the county while the population of the other four districts ranged from approximately three percent to 10 percent of the county's population, such gross imbalance in the population of the several supervisor's districts constituted a case of invidious discrimination and was violative of the "one person, one vote" rule. Dyer v. Rich, 259 F. Supp. 741 (N.D. Miss. 1966).

The "one person, one vote" rule applies to the apportionment by population of county supervisors' districts, for the board of supervisors is a constitutional agency vested with vast authority and responsibility by the legislature and is the effective governing body of a county. Martinolich v. Dean, 256 F. Supp. 612 (S.D. Miss. 1966).

The fact that a board of supervisors fails to select the jury from districts proportionately does not authorize the quashing of the venire, nor the indictment. Ladner v. State, 197 So. 2d 257 (Miss. 1967).

This section [Code 1942, § 2870] affords an adequate remedy at law precluding the issuance of an injunction against holding an election of supervisors until the county shall be redistricted. Glass v. Hancock County Election Comm'n, 250 Miss. 40, 156 So. 2d 825 (1963), appeal dismissed, cert. denied, 378 U.S. 558, 84 S. Ct. 1910, 12 L. Ed. 2d 1035 (1964).

ATTORNEY GENERAL OPINIONS

When candidate's name was placed upon the official ballot as the nominee of the democratic party for the office, he received a majority of votes cast in the general election and the ticket commissioner certified such fact to the secretary of state, the governor issued him a commission in due and legal form, and he qualified by executing bond and taking the oath prescribed by law, this entitled him prima facie, to hold the office and to participate as a member of the board of supervisors, and the other members of the board had no authority to refuse to recognize him as such member. Ops Atty Gen 1931-33, p 43.

A board of supervisors has the authority to employ professional planners and to work out a system of redistricting the county, and to pay for same out of general funds of the county. Ops Atty Gen (Opinion dated August 1, 1968, added to 1972 Code § 19-3-1).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 160-162.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Miller, Who shall rule and govern? Local legislative delegations, racial politics, and the Voting Rights Act. 102 Yale L. J. 105, October 1992.

§ 19-3-3. Eligibility of supervisors.

A person shall not be a member of the board of supervisors who is not a resident freeholder in the district for which he is chosen, and the owner of real estate of the value of One Thousand Five Hundred Dollars ($1,500.00).

SOURCES: Codes, 1892, § 273; 1906, § 292; Hemingway's 1917, § 3664; 1930, § 196; 1942, § 2871; Laws, 1968, ch. 282, § 1, eff from and after passage (approved June 10, 1968).

Cross References — Qualifications of a member of board of supervisors, see MS Const Art. 6, § 176.

Salaries of members of board of supervisors, see §§ 25-3-13 et seq.

JUDICIAL DECISIONS

1. In general.

Candidate for county supervisor was a resident of another county, and thus ineligible for office under residency requirements of Miss. Const. Art. VI, § 176 and Miss. Code Ann. § 19-3-3, because there was no showing that he maintained a permanent residence in the county of his candidacy, notwithstanding that the candidate grew up in that county, claimed ownership of property there, regularly visited his mother there, had registered to vote and voted there, and had other contacts to that county. Young v. Stevens, 968 So. 2d 1260 (Miss. 2007).

Low-income voters have standing to challenge constitutionality of provision that candidate for membership on county board of supervisors must be freeholder; adoption of freeholder requirement to assure quality of those elected as members of board of supervisors creates arbitrary classification based on economic factors and is unconstitutional as denial of equal protection. Williams v. Adams County Bd. of Election Comm'rs, 608 F. Supp. 599 (S.D. Miss. 1985).

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v. Board of Supvrs., 571 F.2d 951 (5th Cir. 1978).

Prima facie right of officer armed with election by people, certificate of his election, regular on its face, and commission therefor, after due qualification, is superior to rights of one claiming to hold over into new term on ground of disqualification of newly elected officer, even though it may finally be determined in a contest that the newly elected officer has not been elected, or is ineligible to hold office. Yates v. Summers, 177 Miss. 252, 170 So. 827 (1936).

Equity court held without jurisdiction to try by injunction right to office of county supervisor of either hold-over officer or of newly elected officer who had a certificate of election, regular on its face, and commission therefor, and who had duly qualified. Yates v. Summers, 177 Miss. 252, 170 So. 827 (1936).

Newly elected member of board of supervisors did not waive claim to office, as against incumbent holding over on ground that newly elected member was ineligible, by accepting appointment from governor after injunctive writ had been served. Yates v. Summers, 177 Miss. 252, 170 So. 827 (1936).

A member of the board of supervisors must be a resident freeholder of the district from which he is chosen, but while holding said office he may be out of the district part of the time if he continues to maintain a home therein. McHenry v. State, 119 Miss. 289, 80 So. 763 (1919).

The acceptance by a member of the board of supervisors of the office of a member of the board of levee commissioners vacated the office of supervisors. Haley v. State, 108 Miss. 899, 67 So. 498 (1915).

RESEARCH REFERENCES

ALR. Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

CJS. 20 C.J.S., Counties § 159.

§ 19-3-5. Bond to be executed by supervisor.

Each member of the board of supervisors, before entering upon the duties of his office, shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office of said member; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). Furthermore, any taxpayer of the county may sue on such bond for the use of the county, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the board shall be surety for any other member.

SOURCES: Codes, 1880, § 2132; 1892, § 275; 1906, § 293; Hemingway's 1917, § 3665; 1930, § 197; 1942, § 2871; Laws, 1986, ch. 458, § 15; Laws, 1991, ch. 604, § 2, eff from and after July 1, 1991.

Cross References — Bonds of state officials, see § 25-1-13.
Sureties on official bonds of county officers, see §§ 25-1-21 et seq.

When a member of the board of supervisors may make his official bond with personal sureties, see § 25-1-31.

JUDICIAL DECISIONS

1. In general.
2. Taxpayer's suit.

1. In general.

Authorization by board of supervisors of district of county was not required before bringing suit by district attorney on behalf of the county or district against a member of the board for loss resulting from his unauthorized action in permitting county's construction equipment to be used for benefit of private individuals. Shumpert v. Lee County, 197 Miss. 513, 20 So. 2d 82 (1944).

Liability of members of county board of supervisors on official bonds is consequential, not direct, and such liability is to indemnify county against any loss proximately caused by illegal act. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934).

Members of county board of supervisors lending county sinking funds on security of trust deeds in manner violating code sections held not liable for making the loans, since, in making appropriations, board members acted judicially. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934).

Members of county boards of supervisors held not liable for failure to collect promptly illegal loans of county sinking funds made by prior board, there being no charge that subsequent boards knew loans were unauthorized or that foreclosure of trust deeds securing them would yield insufficient proceeds or that borrower was insolvent. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934).

Statute respecting loan by county supervisors of sixteenth section township funds imposes its own liability for violating statute, and statute regarding supervisors' bonds does not apply where supervisors do not comply with statutory directions. Gully v. McClellan, 170 Miss. 405, 153 So. 524 (1934).

That official bond of member of board of supervisors was payable to county, instead of to state, as required by statute, did not exempt surety from liability thereon, since bond inured to benefit of persons whom law designated it to secure, regardless of named obligee of bond. State ex rel. Russell v. McRae, 169 Miss. 169, 152 So. 826 (1934).

District attorney suing for county could recover from members of board of supervisors on statutory bond given as security for illegal acts. Walton v. Colmer, 169 Miss. 182, 147 So. 331 (1933), error overruled, 169 Miss. 186, 148 So. 635 (1933).

There is no liability on the bonds of members of the board of supervisors for allowances made to objects authorized by law, although in making such allowances they disregarded certain directions with reference thereto. Miller v. Tucker, 142 Miss. 146, 105 So. 774 (1925).

A supervisor is not liable for injuries caused by a defective bridge in his district, as he is not charged with the duty of actually repairing the highway. Lee v. Styles, 95 Miss. 623, 49 So. 259 (1909).

A bond given by a member of the board of supervisors and duly approved by the proper officers was valid and binding, although the officers made an incorrect calculation of the amount of the penalty. State ex rel. Mitchell v. Smith, 87 Miss. 551, 40 So. 22 (1906).

Court will take judicial knowledge that term of office of a member began on the first Monday of January of a certain year, and that all the taxes which were collectible for the year immediately preceding had not in fact at that date been collected. State ex rel. Mitchell v. Smith, 87 Miss. 551, 40 So. 22 (1906).

2. Taxpayer's suit.

Under the rule that where a special and particular statute deals with a special and particular subject, its particular terms as to that special subject control over general statutes dealing with the subject generally, the newly elected members of a county board of supervisors could not claim authority under Code 1942, §§ 2872, 2944, 2955, 4392, or 4394, to bring suit against the defeated members of the board and their sureties for allegedly illegally expended amounts, in view of the fact that Code 1942, § 9118-10 is specifically directed toward recovery of sums expended contrary to the mandate of the county budget law, and the state auditor is expressly authorized to sue for such recovery. Lincoln County v. Entrican, 230 So. 2d 801 (Miss. 1970).

Although a supervisor's official bond specified a penalty in a sum less than that required by the provisions of Code 1942, § 2872, both the supervisor and his surety were actually bound to the full amount of the statutorily fixed penalty. State v. Moody, 198 So. 2d 586 (Miss. 1967).

The right of a taxpayer to bring suit on behalf of a county or the public is only such as is authorized by statute; the power extends only to suits for money paid to an object not authorized by law, and not for paying out money to an object authorized by law in violation of statutory directions. Mississippi Rd. Supply Co. v. Hester, 185 Miss. 839, 188 So. 281, 124 A.L.R. 574 (1939), but see, Canton Farm Equip., Inc. v. Richardson, 501 So. 2d 1098 (Miss. 1987).

ATTORNEY GENERAL OPINIONS

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties § 160.

§ 19-3-7. Organizational meeting.

The members of the board of supervisors, having given bond and taken the oath of office, shall meet at the courthouse of their county, on the first Monday in January next succeeding the election, and shall organize by electing one of their number to be president, and by electing one of their number to be vice-president, and, being so organized, and attended by the sheriff and clerk, the board may proceed to discharge its duties.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (4); 1857, ch. 59, art 4; 1871, § 1351; 1880, § 2133; 1892, § 276; 1906, § 294; Hemingway's 1917, § 3666; 1930, § 198; 1942, § 2873; Laws, 1959 Ex Sess ch. 22, § 1.

Cross References — Authority for majority of board of supervisors to transact business, see Miss. Const. Art. 6, § 170.

Special and adjourned meetings, see § 19-3-19.

Number which shall constitute quorum, see § 19-3-23.

JUDICIAL DECISIONS

1. In general.

Only the president of the board of supervisors can sign a bill of exceptions upon appeal from a judgment of said board to the circuit court, and if he refuses he may be compelled to do so by mandamus. Roach v. Tallahatchie County, 78 Miss. 303, 29 So. 93 (1901).

ATTORNEY GENERAL OPINIONS

When a member of the board is elected as president, such president is elected for a term of four years, and unless he resigns or his office is vacated in some way the board would not be authorized to elect another member president. Ops Atty Gen 1937-39, p 57.

There is no way to excuse a member of the board from voting. If he does not want to vote he simply remains silent. Ops Atty Gen 1939-41, p 76.

A majority of the other members of the board could not compel a member to vote on any provision. He may vote or not vote as he chooses. Ops Atty Gen 1939-41, p 76.

There is no provision for a roll call of the members of the board of supervisors. However, if a member wants his vote recorded for or against any proposition, he is at liberty and is entitled to do so. Ops Atty Gen 1939-41, p 76.

The president of the board of supervisors has the same right to vote as any other member of the board. He has no additional rights. He may vote when the other members vote, or if the other members tie he may vote, or he may vote to cause a tie. However, he has only one vote on any one question. When a quorum of the board is present and one or more members fail to vote, and the other members vote for the proposition, it should be declared carried. Ops Atty Gen 1939-41, p 76.

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-9. Organizational and other meetings in case of epidemics.

In case it be impracticable, in consequence of the prevalence of an epidemic at the county seat, or from other cause, for the board to meet on the first Monday in January succeeding the election, then such meeting and organization shall take place as early as it may safely be had, on the call of any three members-elect, and at such place as they may designate within the county, and for like cause any other meeting of the board of supervisors may be called by the president, or by the vice-president in the absence or disability of the president, or any three members, to meet at such place as they may designate within the county.

SOURCES: Codes, 1857, ch. 59, art 5; 1871, § 1352; 1880, § 2134; 1892, § 277; 1906, § 295; Hemingway's 1917, § 3667; 1930, § 199; 1942, § 2874; Laws, 1959 Ex Sess ch. 22, § 2.

Cross References — Removal of local governments in emergencies, see §§ 17-7-1 et seq.

Invalidity of "hold harmless" clauses in public and private construction contracts, see § 31-5-41.

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-11. Regular meetings in counties having one court district.

In counties having only one (1) court district, the board of supervisors shall hold regular meetings at the courthouse or in the chancery clerk's office in those counties where the chancery clerk's office is in a building separate from the courthouse. However, the board of supervisors may meet in any other county-owned building if such building is located within one (1) mile of the courthouse and if, more than thirty (30) days prior to changing the meeting place, the board posts a conspicuous, permanent notice to that effect in the chancery clerk's office and in one (1) other place in the courthouse, publishes notice thereof in a newspaper published in the county, or if there be no newspaper published in the county, then in a newspaper having general circulation in the county, once each week, for at least three (3) consecutive weeks, and enters an order upon its minutes designating and describing in full the building and room to be used as the meeting room of the board of supervisors. The board of supervisors shall meet on the first Monday of each month. However, when such meeting date falls on a legal holiday, then the said meeting shall be held on the succeeding day.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (5); 1857, ch. 59, art 6; 1871, § 1353; 1880, § 2135; 1892, § 278; 1906, § 296; Hemingway's 1917, § 3668; 1930, § 200; 1942, § 2875; Laws, 1904, ch. 136; Laws, 1916, ch. 242; Laws, 1958, ch. 215, § 1; Laws, 1980, ch. 534, eff from and after passage (approved May 26, 1980).

Cross References — Location of meetings when emergency results from threat of enemy attack, see § 17-7-1.

Regular meetings when there are two court districts, see § 19-3-13.

Special and adjourned meetings, see § 19-3-19.

Requirement of open and public meetings, see §§ 25-41-1 et seq.

JUDICIAL DECISIONS

1. In general.

This statute furnishes constructive notice to the general public as to all regular meetings of boards of supervisors and no other notice is required, except where specifically required by statute or in unusual circumstances, in order for the boards to conduct their business; Special notice was not required prior to the execution of renewal leases on 16th section lands. Tally v. Board of Supvrs., 323 So. 2d 547 (Miss. 1975).

Holding that minutes of a board of supervisors are legally signed on the day following that fixed by law, where such day is a holiday. Gordon v. Monroe County, 244 Miss. 849, 147 So. 2d 126 (1962).

Requirement of this section [Code 1942, § 2875] that state boards of supervisors hold their regular meetings on first Monday in each month applies only to counties having one court district. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

Meeting of board of supervisors on first Monday of month, which had been time fixed for regular meetings before amendment of statute omitted time therefor, being valid, tax assessment thereat was valid. Wade v. Woodward, 166 Miss. 406, 145 So. 737 (1933).

Where the clerk of the board of supervisors attends their meeting in the courthouse, the same is legally his office for that purpose, although as "chancery clerk" he had an office not in the courthouse. Johnson v. Board of Supvrs., 113 Miss. 435, 74 So. 321 (1917).

A meeting of a board of supervisors held in a chancery clerk's office, in a separate building from the courthouse, although in the courthouse yard, was illegal, and a lease of a sixteenth section made at such a meeting was void, prior to the statute authorizing a meeting at such place. Sexton v. Board of Supvrs., 86 Miss. 380, 38 So. 636 (1905).

The board, after final adjournment, is without power ordinarily to reverse or vacate its judicial acts. Keenan v. Harkins, 82 Miss. 709, 35 So. 177 (1903).

Prior to Laws 1904 ch. 136, the board of supervisors were not authorized to meet and transact business in any other place than the courthouse. Harris v. State, 72 Miss. 960, 18 So. 387 (1895).

A courthouse is a house where courts are held, and "at the courthouse" has a crystallized and settled meaning in this connection, and means at the "building occupied and appropriated according to law for the holding of the courts." Harris v. State, 72 Miss. 960, 18 So. 387 (1895).

A caption of the minutes of a board of supervisors that their meeting was held in the office of the chancery clerk does not import that the session was in fact held at the courthouse. State ex rel. Att'y Gen. v. Harris, 18 So. 123 (Miss. 1895).

ATTORNEY GENERAL OPINIONS

A Board of Supervisors may not hold or transact official acts outside the County in which they were elected. Also, see Sections 25-41-1 et seq. Ellis, March 1, 1995, A.G. Op. #95-0119.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 138, 141 et seq.

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-13. Regular meetings in counties having two court districts.

In counties having two court districts, the board of supervisors shall hold regular meetings on the first Monday of each month; and in such counties where only one regular meeting of the board of supervisors is held in each month, the board of supervisors shall hold its first meeting in each year at the courthouse or in the chancery clerk's office, where the chancery clerk's office is in a building separate from the courthouse, of the first district, on the first Monday of January, and shall hold its second meeting at the courthouse or in the chancery clerk's office, where the chancery clerk's office is in a building separate from the courthouse, of the second district, on the first Monday of February, and shall alternate thereafter.

In counties having two court districts, the board of supervisors may hold two regular meetings in each month, and in such counties, where the board of supervisors elects to hold two regular meetings in each month, the board of supervisors shall hold its first meeting in each month at the courthouse or in the chancery clerk's office, where the chancery clerk's office is in a building separate from the courthouse, of the first district, on the first Monday of each month, and shall hold its second meeting at the courthouse or in the chancery clerk's office, where the chancery clerk's office is in a building separate from the courthouse, of the second district, on the second Monday of each month.

If the board of supervisors in any such county shall elect to hold two regular meetings in each month, as herein provided, the board shall enter an order upon its minutes to that effect and shall give at least five days' notice thereof by posting copies of such notice at the courthouse door of each district, and after giving such notice the board shall hold regular meetings each month in each district as provided in this section.

However, in counties having two court districts where the board of supervisors has heretofore pursuant to law elected to hold two regular meetings a month, the board of supervisors may continue to hold two such regular meetings each month, as heretofore provided for, and no further order or notice of such meetings shall be required.

Moreover, in those counties having two judicial districts, where the act creating the two districts provides otherwise, the board of supervisors may continue to hold regular meetings as required by the act creating the two districts.

When any such meeting date falls on a legal holiday, then the said meeting shall be held on the succeeding day.

SOURCES: Codes, 1892, § 279; 1906, § 297; Hemingway's 1917, §§ 3669, 3670; 1930, § 201; 1942, § 2876; Laws, 1916, ch. 242; Laws, 1958, ch. 215, § 2.

Cross References — Location of meetings when emergency results from threat of enemy attack, see § 17-7-1.

Regular meetings when there is only one court district, see § 19-3-11.

Meetings of board of supervisors at Gulfport and Biloxi, see § 19-3-15.

Special and adjourned meetings, see § 19-3-19.

Requirement of open and public meetings, see §§ 25-41-1 et seq.

JUDICIAL DECISIONS

1. In general.

Two regular monthly meetings may be held by board of supervisors in a county divided into two court districts, when legislative act dividing county into two court districts requires holding of alternate meetings, but does not require holding of alternate monthly meetings. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

It is not necessary that minutes of every regular meeting of board of supervisors in second district of county divided into two court districts affirmatively adjudicate fact to be that board has theretofore elected to hold and has given notice of its intention to hold two regular meetings in each month, and its acts, as reflected by its minutes, are not void by board's failure to so adjudicate at each and every meeting. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

Presumption in absence of proof to contrary that public officers perform their duty in manner required by law applies to meetings of boards of supervisors and burden is upon person challenging legality thereof to show that meeting is illegal. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

Lack of authority in board of supervisors of county divided into two court districts to hold regular meetings in second district on second Monday in each month is not shown by failure of minutes of meeting of board to affirmatively show board had theretofore so elected, as burden of establishing invalidity of meeting is upon party asserting it to show board had not in fact so elected. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

Petitioner for writ of certiorari to review proceedings of board of supervisors of county divided into two court districts has right to show that board has never adopted order for holding of regular meetings in second district on second Monday of each month and on failure to make such showing he cannot contend orders of board of supervisors are void because they fail to show lawful authority for holding meetings at which orders were adopted. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 138, 141 et seq.

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-15. Meetings of board in Harrison County.

In Harrison County, a county having two judicial districts, the board of supervisors shall hold their meetings or sessions at the time required and provided for by law, alternately at Gulfport and Biloxi, respectively, at the seats of justice of the judicial districts, holding their first meeting or session as to the second judicial district, at Gulfport and their jurisdiction shall extend over the entire county at all times, just as if it were not divided into two separate districts.

SOURCES: Codes, 1942, § 2910-12; Laws, 1962, ch. 257, § 12, eff from and after passage (approved June 1, 1962).

Cross References — Regular meetings when there are two court districts, see § 19-3-13.

Requirement of open and public meetings, see §§ 25-41-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 138, 141 et seq.

§ 19-3-17. Length of sessions; recesses.

At regular meetings for the transaction of business, the board of supervisors may sit for a period not longer than ten days in any one month. At meetings for the transaction of business under the revenue laws, the board may continue in session as long as business may require. However, in counties having a population of more than forty thousand, and in counties having two court districts, the board may continue in session at any other regular meeting than revenue meetings for a period not longer than twelve days in any one month. Furthermore, the board of supervisors may recess from time to time, subject to the limitation herein provided, to convene on a day fixed by an order of the board entered on its minutes, and may transact any business coming before it for consideration.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (5); 1857, ch. 59, art 6; 1871, § 1353; 1880, § 2135; 1892, § 278; 1906, § 296; Hemingway's 1917, § 3668; 1930, § 202; 1942, § 2877; Laws, 1904, ch. 136; Laws, 1916, ch. 242; Laws, 1935, ch. 62; Laws, 1950, ch. 245.

JUDICIAL DECISIONS

1. In general.
2. Failure to sign minutes.

1. In general.

The provision for the recessing of meetings applies with equal force to regular meetings as to meetings for the transaction of business under the revenue laws. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

A board of supervisors must state in its minutes and order the business to be transacted at an adjourned meeting only if it is one to be held after final adjournment of the regular monthly meeting, irrespective of whether the full time allotted for the regular monthly meeting has expired. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

That a board's minutes state that a meeting was "adjourned", rather than recessed, does not bring into operation the requirement that the business to be transacted must be stated, where it is apparent that there was a suspension rather than a termination of the meeting. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

This section [Code 1942, § 2877] and Code 1942, §§ 9786, 9789 and 9791, dealing with the assessments of property for purposes of taxation and revenue are in pari materia and must be construed together and, if possible, read into each other, so as to make a consistent whole. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Manifest intention of Legislature in enacting Code 1942, § 2877, permitting board of supervisors to remain in session as long as business requires, Code 1942, § 9786, providing board shall complete equalization at least ten days before August meeting, Code 1942, § 9789, providing that board shall meet on first Monday of August to hear objections, and Code 1942, § 9791, providing that if board fails to perform any duty in reference to assessment roll at time required by law, duty shall be performed at later date, is to require completion of equalization of assessments at least ten days before sitting of board of supervisors to hear objections to assessments and to give taxpayer period of ten days in which to examine roll and determine whether his assessment is fair, equal and uniform, and determine whether he desires to file any objection thereto; and subject to these rights of taxpayer, it is intention of legislature that board should have full opportunity and full power to validly, equally and uniformly assess all property so as to constitute valid assessment to the end that revenue by taxation might be forthcoming to meet necessary expenses of government. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Where the board of supervisors continued in session in under this section in equalizing assessments until July 27, and gave notice that objections to assessments would be heard on August 6, such assessment was valid notwithstanding Code 1942, § 9786, providing that the board should complete equalization of taxes at least ten days before the August meeting, and Code 1942, § 9789, providing that board should hold a meeting on first Monday of August to hear objections to assessments, which fell on August 3rd, since the latter two sections had to be read in connection with Code 1942, § 9796, which provides that if the board fails to perform its duty in reference to assessment poll on time, the duty should be performed later. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Under Code 1942, §§ 9786, 9789, 9791, and this section [Code 1942, § 2877], when it is necessary for board of supervisors to continue in session in equalizing assessments until July 27th because business requires it, board is authorized to hear objections to assessments on August 6th, although first Monday of August is on 3rd, when proper notice is given by board at its July meeting of hearing of objections on August 6th. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

There must be substantial, strict compliance with this section [Code 1942, § 2877] by a board of supervisors. Byrd v. Byrd, 193 Miss. 249, 8 So. 2d 510 (1942).

The board of supervisors may continue in session as long as business may require at meetings for the transaction of business under the revenue law, but this authority does not apply to other meetings. Davis v. Grice, 141 Miss. 412, 106 So. 631 (1926).

2. Failure to sign minutes.

This section [Code 1942, § 2877] and Code 1942, § 2886, providing that the minutes of each day shall be read and signed by president before final adjournment of board are in pari materia and must be construed together, and, if possible, read into each other, so as to make a consistent whole. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

The board of supervisors can meet for transaction of business under the revenue law and recess from day to day without signing minutes for any day's meeting, and, provided minutes are signed on last day, terms of both Code 1942, §§ 2877 and §§ 2886 are literally complied with. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Failure of president of board of supervisors, meeting to transact business under revenue law, to sign minutes of board for July 13, recessing to convene on July 15, does not invalidate order of board, entered on July 15, approving real property assessment roll, minutes for July 15 being duly signed, and it is only unsigned minutes of July 13 which are invalidated. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Failure of president of board to sign minutes for meeting designating a future date for reconvening of the board deprived the board of power to reconvene on that date, and consequently liquor election ordered by the board on the reconvening date was void, notwithstanding that the minutes of the reconvening date were signed by the president. Brand v. Board of Supvrs., 198 Miss. 131, 21 So. 2d 579 (1945).

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-19. Special, emergency and adjourned meetings.

(1) The board of supervisors may, at a regular meeting, by an order on its minutes, adjourn to meet at any time it may determine upon.

(2) The president, or the vice president in the absence or disability of the president, or any three (3) members of the board, may call special meetings when deemed necessary. Notice shall be given of all special meetings, for at least five (5) days, by advertisement posted at the courthouse door, or published in a newspaper of the county, and the notice thereof, whether posted or published in a newspaper, shall be entered in full on the minutes of said meeting. The notice of a special meeting, shall specify each matter of business to be transacted thereat, and at such special meetings business shall not be transacted which is not specified in the order or notice for such meeting.

(3) The president, or the vice president in the absence or disability of the president, or any two (2) members of the board, may by written notice, call an emergency meeting of the board of supervisors in cases of an emergency arising as a result of serious damage to county property, or to roads or bridges, or emergencies arising as a result of epidemic conditions or weather conditions. The notice shall state the time of the meeting and distinctly specify the subject matters of business to be acted upon and be signed before a notary by the officer or officers calling the meeting. At least three (3) hours before the time fixed for the meeting, notice shall be personally delivered to the members of the board who have not signed it and who can be found. The notice shall also be posted at the courthouse door at least three (3) hours before the time fixed for the meeting. If a member of the board cannot be found to complete the personal delivery of the notice, the president, vice president or any one of the two (2) members of the board calling an emergency meeting shall make every attempt, within the applicable notice period, to contact the board member that was not personally found by other available means, including, but not limited to, telephone or e-mail. The method of notice used to call the meeting shall be entered on the minutes of the emergency meeting, and business not specified in the notice shall not be transacted at the meeting.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (5); 1857, ch. 59, art 6; 1871, § 1353; 1880, § 2135; 1892, § 280; 1906, § 298; Hemingway's 1917, § 3671; 1930, § 203; 1942, § 2878; Laws, 1950, ch. 243; Laws, 1959 Ex Sess ch. 22, § 3; Laws, 2012, ch. 354, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment, in (2), deleted the former fourth sentence, which read: "However, in cases of emergency arising as a result of serious damage to county property, or to roads or bridges, or as a result of epidemic, or where immediate action is required for the repair or reconstruction of county roads or bridges, special meetings of the board of supervisors may be called, as provided herein, for the purpose of considering such emergency matters and taking appropriate action with reference thereto, upon twenty-four hours' notice given to each member of the board of supervisors in person, or by leaving a copy thereof at his usual place of residence," deleted "The order providing for an adjourned meeting, and" preceding "The notice of a special meeting," and deleted "adjourned or‘ following "transacted thereat, and at such"; and added (3).

Cross References — Location of meetings whenever emergency results from threat of enemy attack, see § 17-7-1.

Requirement of open and public meetings, see §§ 25-41-1 et seq.

Special or adjourned meetings to hear objections to assessments, see § 27-35-95.

JUDICIAL DECISIONS

1. Special meetings.
2. Adjourned meetings.

1. Special meetings.

A special meeting may be called for a time while the board of supervisors is in recess during the regular monthly meetings, or it may be set for a time in a future month. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

Where a county, which had become the purchaser of land upon foreclosure of a deed of trust held by it, and had received a deed thereto from a subsequent trustee, but had obtained no title because the substitution of the trustee was not made a matter of record as required by statute, sold the land under an order of the board of supervisors, which was void in that the order had been made at a special meeting, the call for which failed to make provision, either expressly or impliedly, for taking up the matter of the sale and conveyance of the land, a later valid foreclosure of the trust deed and the purchase by the county did not inure to the benefit of the would-be purchaser under the void sale by the board, so as to render her title good, since such would-be purchaser had been affected with notice of the illegality of the first foreclosure and the conveyance following it made to her, and persons dealing with members of the board of supervisors, who are trustees for the public and bound by the limitations fixed by law on their powers, must take notice of their powers and cannot acquire rights where they are acting beyond their authority. Simpson County v. Floyd, 192 Miss. 501, 6 So. 2d 580 (1942).

The board, after final adjournment, is without power ordinarily to reverse or vacate its judicial acts. Keenan v. Harkins, 82 Miss. 709, 35 So. 177 (1903).

If the minutes of the board at a special meeting be silent as to notice, it will be presumed, in the absence of evidence to the contrary, that the notice was given. Corburn v. Crittenden, 62 Miss. 125 (1884).

The record need not show the notice, but it is advisable that it should do so. Williams v. Cammack, 27 Miss. 209, 61 Am. Dec. 508 (1854).

A levy of taxes at a special meeting held without previous notice is void. Doe ex dem. Doe v. Burford, 26 Miss. 194 (1853).

2. Adjourned meetings.

A board of supervisors must state in its minutes and order the business to be transacted at an adjourned meeting only if it is one to be held after final adjournment of the regular monthly meeting, irrespective of whether the full time allotted for the regular monthly meeting has expired. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

A board of supervisors need not specify on its minutes the business to be transacted on a day to which a regular meeting has been recessed. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

There must be substantial, strict compliance with this section [Code 1942, § 2878] by a board of supervisors. Byrd v. Byrd, 193 Miss. 249, 8 So. 2d 510 (1942).

Where the order for a three-day adjournment of a board of supervisors' meeting specified no particular business that would be taken up and considered at the adjourned meeting, action taken at the adjourned meeting regarding equalization of tax assessments was void. Byrd v. Byrd, 193 Miss. 249, 8 So. 2d 510 (1942).

Where the regular session of the board of supervisors began on July 7th, and the board provided for consideration of equalization of assessments until completion thereof, and then recessed from July 9th to July 14th, without specifying nature of business to be transacted on July 14th, the meeting on July 14th did not constitute an adjourned meeting within the purview of statute requiring order for adjournment to specify the business to be transacted thereat and proceedings of the board on latter date were valid. Luxich v. State, 8 So. 2d 510 (Miss. 1942).

Order disallowing city's claim for road taxes collected by county, made at adjourned meeting of board of supervisors, order for which failed to specify claim as matter of business to be transacted thereat, held invalid. City of Grenada v. Grenada County, 167 Miss. 814, 150 So. 657 (1933).

Consent of all parties to hearing of city's claim for road taxes collected by county at adjourned meeting of board of supervisors, order for which failed to specify claim as matter of business to be transacted thereat, held not to validate order disallowing claim so that appeal could be taken therefrom. City of Grenada v. Grenada County, 167 Miss. 814, 150 So. 657 (1933).

Approval of assessment rolls of first district at board's adjourned meeting in second district of county was nullity. Hunter v. Bennett, 149 Miss. 368, 115 So. 204 (1928).

By order on its minutes the board of supervisors may adjourn to meet at any time it may determine, but at such adjourned meeting it can only transact such business as the order making the adjourned meeting specifies. Davis v. Grice, 141 Miss. 412, 106 So. 631 (1926).

Board of supervisors had no authority to hold an adjourned meeting at a time not appointed by law, and any acts done by the board at such illegal meeting were invalid. Wolfe v. Murphy, 60 Miss. 1 (1882).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-21. Presiding officer.

The president or vice-president in the absence or disability of the president, shall preside at all meetings of the board, and if they both be absent or disabled, the board may elect another member to preside during the absence of the president and vice-president.

SOURCES: Codes, 1857, ch. 59, art 7; 1871, § 1354; 1880, § 2136; 1892, § 281; 1906, § 299; Hemingway's 1917, § 3672; 1930, § 204; 1942, § 2879; Laws, 1959 Ex Sess ch. 22, § 4.

Cross References — Election of president, see § 19-3-7.
Requirement that president read and sign minutes, see § 19-3-27.
Approval of bonds of county officers by president, see § 25-1-19.

§ 19-3-23. Quorum; fine for nonattendance.

Three (3) members of the board of supervisors shall constitute a quorum; and in case that number should not attend on the first day of any regular, adjourned or special meeting, the sheriff may adjourn the meeting from day to day until a quorum is present. A member failing to attend any meeting, having notice thereof, shall be fined Five Dollars ($5.00) per day for each day he may be absent, for which the clerk shall enter judgment nisi; and unless a sufficient excuse be made at the next meeting of the board, execution shall issue for the fine, which shall be paid into the county treasury. No allowance shall be made and no warrants shall be issued to such member until the fine and all costs are paid.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (1, 9); 1857, ch. 59, art 8; 1871, § 1355; 1880, § 2137; 1892, § 282; 1906, § 300; Hemingway's 1917, § 3673; 1930, § 205; 1942, § 2880; Laws, 1990, ch. 419, § 1, eff from and after passage (approved March 15, 1990).

Cross References — Authority for majority of members of board of supervisors to transact business, see Miss. Const. Art. 6, § 170.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 143.

CJS. 20 C.J.S., Counties §§ 134-138.

§ 19-3-25. Sheriff to attend meetings.

The sheriff of the county shall attend all meetings of the board of supervisors, either in person or by deputy, and shall execute all its process and orders.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (7); 1857, ch. 59, art 10; 1871, § 1357; 1880, § 2139; 1892, § 284; 1906, § 302; Hemingway's 1917, § 3675; 1930, § 208; 1942, § 2883; Laws, 1968, ch. 361, § 63, eff from and after January 1, 1972.

Cross References — Requirement that sheriff attend sessions of circuit and chancery courts, see § 19-25-35.

ATTORNEY GENERAL OPINIONS

Board of Supervisors may go into executive session without sheriff and decision of whether sheriff should leave meeting at this point is left to discretion of board of supervisors. Pickett, March 9, 1994, A.G. Op. #94-0129.

§ 19-3-27. Duties of clerk of board of supervisors; signing of minutes.

It shall be the duty of the clerk of the board of supervisors to keep and preserve a complete and correct record of all the proceedings and orders of the board. He shall enter on the minutes the names of the members who attend at each meeting, and the names of those who fail to attend. He shall safely keep and preserve all records, books, and papers pertaining to his office, and deliver them to his successor when required. The minutes of each day's proceedings shall either (a) be read and signed by the president or the vice president, if the president is absent or disabled so as to prevent his signing of the minutes, on or before the first Monday of the month following the day of adjournment of any term of the board of supervisors; or (b) be adopted and approved by the board of supervisors as the first order of business on the first day of the next monthly meeting of the board.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (6); 1857, ch. 59, art 14; 1871, § 1361; 1880, § 2142; 1892, § 287; 1906, § 305; Hemingway's 1917, § 3678; 1930, § 211; 1942, § 2886; Laws, 1946, ch. 305; Laws, 1959 Ex ch. 22, § 5; Laws, 1960, ch. 189; Laws, 1966, ch. 291, § 1; Laws, 1989, ch. 337, § 1, eff from and after October 1, 1989.

Cross References — Clerk of chancery court being clerk of board of supervisors, see Miss. Const. Art. 6, § 170.

Bond and duties of clerk acting as clerk of chancery court, see §§ 9-5-131 et seq.

Duties of clerk under county budget law, see §§ 19-11-1 et seq.

Power of board of supervisors to reestablish lost records, see § 25-55-17.

Homestead exemption duties, see § 27-33-35.

JUDICIAL DECISIONS

1. In general.
2. Necessity and sufficiency of minutes.
3. —Reading and signing of minutes.
4. —Particular matters.

1. In general.

This section [Code 1942, § 2886] and Code 1942, § 2877, providing that board of supervisors may recess meetings for transaction of business under revenue law to convene on a day fixed by order of board entered on its minutes are in pari materia and must be construed together, and, if possible, read into each other, so as to make a consistent whole. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

A county board of supervisors is a court of record, since it is required to keep minutes of its proceedings. Gardner v. Price, 197 Miss. 831, 21 So. 2d 1 (1945).

2. Necessity and sufficiency of minutes.

Boards of supervisors can bind counties, or districts therein, only when acting within their authority and in the mode and manner by which this authority is to be exercised under the statutes, and their contracts and every other substantial action taken by them must be evidenced by entries on their minutes, and can be evidenced in no other way. Board of Supvrs. v. Dawson, 208 Miss. 666, 45 So. 2d 253 (1950).

Minutes of county board of supervisors are the exclusive evidence of what the board has done. Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945); Smith v. Board of Supvrs., 124 Miss. 36, 86 So. 707 (1921).

The minutes of boards of supervisors reciting their orders and judgments, like those of justices of the peace, will be looked upon with indulgence, and though unskillfully drawn, will be legally sufficient if their meaning can be ascertained by fair and reasonable interpretation. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938); Noxubee County v. Long, 141 Miss. 72, 106 So. 83 (1925).

An order of the board of supervisors is necessary to authorize the clerk of the board to amend a former order. Campbell v. Humphreys County, 133 Miss. 410, 97 So. 722 (1923).

The board of supervisors has no authority to enter an order as of a prior term. Board of Supvrs. v. Parks, 132 Miss. 752, 96 So. 466 (1923).

The minutes of the board of supervisors cannot be varied by the testimony of the individual members of the board. Smith v. Board of Supvrs., 124 Miss. 36, 86 So. 707 (1921).

3. —Reading and signing of minutes.

The requirement of this section [Code 1942, § 2886] is met, where the first Monday falls on a legal holiday, by a signing on the following day. Gordon v. Monroe County, 244 Miss. 849, 147 So. 2d 126 (1962).

The statutory requirement for the president of the board to sign the minutes before the final adjournment of the term is mandatory, where the board is equalizing assessment rolls, which can only be initiated at the July meeting, and such tax matters required by law to be transacted only at the July meeting cannot be ratified by signing or approving the July minutes at the August meeting. Wilson v. Eckles, 232 Miss. 577, 99 So. 2d 846 (1958).

Where the minutes of the board of supervisors at the July 1932 term during which the board equalized the assessment rolls, were not approved and signed by the president of the board, but the adjourning minutes were signed by the chancery clerk, the assessment and the tax sales based thereon were void. Wilson v. Eckles, 232 Miss. 577, 99 So. 2d 846 (1958).

The board of supervisors can meet for transaction of business under the revenue law and recess from day to day without signing minutes for any day's meeting, and, provided minutes are signed on last day, terms of both Code 1942, §§ 2877 and 2886 are literally complied with. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Failure of president of board of supervisors, meeting to transact business under revenue law, to sign minutes of board for July 13, recessing to convene on July 15, does not invalidate order of board, entered on July 15, approving real property assessment roll, minutes for July 15 being duly signed, and it is only unsigned minutes of July 13 which are invalidated. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Where proof, which went in without objection in trial courts, disclosed affirmatively that the minutes of the meeting of the board of supervisors of Jones County at Ellisville, at which order approving assessment rolls of the first judicial district of such county was entered, were not signed by the president of the board as required by law, effect of failure to sign the minutes on the validity of the assessment and subsequent tax sale of land assessed was sufficiently raised by former owner's denial of legality of the assessment as alleged in the original bill and cross bill of the state in suit to confirm tax title. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Where the only sitting of the board of supervisors of Jones County at Ellisville in the First Judicial District during August was on a specific date at which an order was entered for approval of the assessment roll for lands in the First Judicial District, and the minutes for such meeting were not signed by the president of the board, the assessment and subsequent tax sale based thereon were void, and state acquired no title by virtue of such sale as to warrant confirmation thereof either by the state or persons claiming through purchasers from the state. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Finding of trial court that order of board of supervisors ordering referendum election upon issue whether traffic in beer and light wines should be excluded from county was properly and timely signed by the president of the board, was not manifestly wrong or without sufficient basis so as to require reversal. Miller v. Board of Supvrs., 198 Miss. 320, 22 So. 2d 372 (1945).

Failure of president of board to sign minutes for meeting designating a future date for reconvening of the board deprived the board of power to reconvene on that date, and consequently liquor election ordered by the board on the reconvening date was void, notwithstanding that the minutes of the reconvening date were signed by the president. Brand v. Board of Supvrs., 198 Miss. 131, 21 So. 2d 579 (1945).

The requirement of this section [Code 1942, § 2886] that the president of the board shall sign the minutes before adjournment of a meeting is mandatory. Gardner v. Price, 197 Miss. 831, 21 So. 2d 1 (1945); Brand v. Board of Supvrs., 198 Miss. 131, 21 So. 2d 579 (1945).

Entry on the minutes of county board of supervisors at its August meeting, that "all minutes of the regular and continued July, 1930 meetings were read and approved," constituted sufficient proof that the president of the board did not sign the minutes of the July meeting before the final adjournment of that meeting as required by this section [Code 1942, § 2886], in view of the practice of the board to have the minutes of a meeting read and approved at the succeeding meeting. Gardner v. Price, 197 Miss. 831, 21 So. 2d 1 (1945).

Fact that the minutes of county board of supervisors at its July meeting were not signed by the president of the board before final adjournment of that meeting as required by this section [Code 1942, § 2886], but were read, approved and signed at the succeeding August meeting, did not render invalid those acts transacted by the board at the July meeting which it had authority to transact at the August meeting, although such acts became effective when the minutes were signed at the August meeting. Gardner v. Price, 197 Miss. 831, 21 So. 2d 1 (1945).

Where equalization of taxes could only be initiated at July meeting of county board of supervisors after examination and notice to the taxpayers ordered at that meeting to appear at the August meeting to present objections, failure of the president of the board to sign the minutes of the July meeting before final adjournment as required by this section [Code 1942, § 2886] invalidated the act of the board at the July meeting relating to tax assessments, and consequently tax sale and patent predicated thereon were void, notwithstanding that the minutes of the July meeting were approved and signed at the August meeting, since such tax matters required by law to be transacted only at the July meeting could not be ratified by signing the July minutes at the August meeting. Gardner v. Price, 197 Miss. 831, 21 So. 2d 1 (1945).

A failure to read and sign the minutes may be remedied at the next meeting. Beck v. Allen, 58 Miss. 143 (1880).

4. —Particular matters.

As to drawing names for jurors, see Ellis v. State, 142 Miss. 468, 107 So. 757 (1926).

Minutes of the board of supervisors with reference to highways will be looked upon with indulgence and where their meaning can be ascertained will be enforced. Noxubee County v. Long, 141 Miss. 72, 106 So. 83 (1925).

A contract with reference to leasing sixteenth section lands must be entered on the minutes of the board and the terms of such contract cannot be varied by parol nor can a court of equity alter it. McPherson v. Richards, 134 Miss. 282, 98 So. 685 (1924).

Contracts of the board of supervisors for the county must be entered on their minutes and such contracts cannot be varied except by subsequent orders of the board. Lamar County v. Tally & Mayson, 116 Miss. 588, 77 So. 299 (1918).

The board of supervisors when equalizing taxes is a court of limited jurisdiction and all jurisdictional facts must appear of record upon their minutes or the proceedings will be void. Robertson v. First Nat'l Bank, 115 Miss. 840, 76 So. 689 (1917).

The board of supervisors in order to sell timber on the sixteenth section school land must exercise such authority while in session as a board, and their contracts with reference thereto must then be executed and their orders entered on the minutes of the board to make the contract valid. Gilchrist-Fordney Co. v. Keyes, 113 Miss. 742, 74 So. 619 (1917).

Parol evidence is inadmissible to impeach the record of the board of supervisors, upon which a tax sale rests, for the purpose of supporting a tax title. McCord v. Shaw, 77 Miss. 900, 27 So. 602 (1900), error overruled, 77 Miss. 910, 28 So. 958 (1900).

A contract made by an order on its minutes thus cannot be varied by proof aliunde of any misunderstanding of its purport. Bridges & Hill v. Board of Supvrs., 58 Miss. 817 (1881).

County board of supervisors can contract only by an order on its minutes. Bridges & Hill v. Board of Supvrs., 58 Miss. 817 (1881); Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945).

An order for the issuance of a warrant need not be stated or repeated in the warrant, but should be recorded on the minutes. Clayton v. McWilliams, 49 Miss. 311 (1873).

ATTORNEY GENERAL OPINIONS

Although the minutes of a county board of supervisors must be read and signed by the president, or the vice president if the president is absent or disabled so as to prevent his signing, there is no specific requirement that the president of the

Board sign resolutions duly and lawfully passed by the Board. Thompson, July 2, 1992, A.G. Op. #92-0467.

The chancery clerk is ultimately responsible for retaining original title documents for county real and personal property. Ross, Jr., April 7, 2000, A.G. Op. #2000-0153.

The chancery clerk must wait for the minutes (a) to be signed by the board president or the vice president, if the president is absent or disabled or (b) to be adopted and approved by the board of supervisors as the first order of business on the first day of the next monthly meeting of the board to have the authority to pay the claims. Crook, July 17, 2002, A.G. Op. #02-0297.

Even where minutes are approved by way of the board president's signature, the board as a whole may also review, ratify, and make corrections to the minutes at its next meeting in order to ensure that the minutes have been accurately recorded. Crook, July 17, 2002, A.G. Op. #02-0297.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 157 et seq.

CJS. 20 C.J.S., Counties § 203.

§ 19-3-29. Appointment of clerk pro tempore.

In case the office of clerk shall be vacant, or the clerk and his deputies be absent, refuse, or fail to perform the duties required, the board may appoint a clerk for the time, who, on taking the oath of office shall be authorized to discharge the duties and to receive the compensation, for the time being, of the clerk of the board.

SOURCES: Codes, 1857, ch. 59, art 15; 1871, § 1362; 1880, § 2143; 1892, § 288; 1906, § 306; Hemingway's 1917, § 3679; 1930, § 212; 1942, § 2887.

JUDICIAL DECISIONS

1. In general.

A county board of supervisors' refusal to reinstate the chancery clerk to the positions of clerk of the board of supervisors and county auditor exceeded the board's limited grant of authority under § 19-3-29, which authorizes the board to appoint a clerk pro tempore, where the chancery clerk had merely intended to temporarily vacate those positions and there were no findings that the chancery clerk failed to perform any duty required of him so as to justify the board's refusal to comply with his request for reinstatement. Barlow v. Weathersby, 597 So. 2d 1288 (Miss. 1992).

§ 19-3-31. Employment of office clerks in certain counties.

The board of supervisors of any county in the State of Mississippi, now or hereafter having two (2) judicial districts and an assessed valuation of property for ad valorem taxation in excess of Seventy-five Million Dollars ($75,000,000.00), according to the last completed assessment for taxation, and of any Class 3 county bordering on the Mississippi River and the State of Louisiana wherein U. S. Highway 61 and Mississippi Highway 24 intersect, is authorized to employ, in its discretion, an office clerk to maintain an office for said board of supervisors.

The board of supervisors may compensate said office clerk in such amounts as it may deem proper, said compensation to be paid from the road funds of such county.

SOURCES: Codes, 1942, § 2887.5; Laws, 1958, ch. 209, §§ 1, 2; Laws, 1972, ch. 334, § 1, eff from and after passage (approved April 13, 1972).

§ 19-3-33. Publication of proceedings.

The board of supervisors may have its proceedings published in some newspaper published in the county, and cause the same to be paid for out of the county treasury, but the costs of such publication shall not exceed the sum fixed by law for publishing legal notices. If there be more than one newspaper published in the county, the contract for publishing the proceedings, if made, shall be let to the lowest bidder among them.

SOURCES: Codes, 1892, § 307; 1906, § 326; Hemingway's 1917, § 3699; 1930, § 213; 1942, § 2888.

Cross References — Publication of annual budget, see § 19-11-7.

Inapplicability of publishing fee schedule to publication of proceedings of board of supervisors, see § 25-7-65.

JUDICIAL DECISIONS

1. In general.

The statute makes no qualification that the contract for publication of the proceedings of a board of supervisors shall be let to the lowest and best bidder, or to the lowest responsible bidder, but plainly requires that it be let to the lowest bidder, and members of the board were without authority to attach the additional element of "responsible" bidders. Klyce v. Alcorn County, 192 Miss. 440, 6 So. 2d 298 (1942).

Where two newspapers submitted bids of $15 and $25 per month, respectively, for the publication of the proceedings of a board of supervisors, the board could not award the contract to the newspaper making the $25 bid, on the theory that a stipulation in its bid that it would charge the legal rate for the publication in case the minutes of the board did not amount to $25 as computed by the legal rate might render the amount to be paid less than that stipulated in the other bid, since the law inserted a stipulation to the same effect in the bid of the other newspaper. Klyce v. Alcorn County, 192 Miss. 440, 6 So. 2d 298 (1942).

ATTORNEY GENERAL OPINIONS

But it is mandatory on the board of supervisors to either publish the proceedings of the board as set forth in this section [Code 1942, § 2888] or a synopsis of the proceedings as set forth in the following section [Code 1942, § 2889]. Ops Atty Gen 1931-33, p 128.

The publication authorized by this section [Code 1942, § 2888] would be a publication of the minutes of the meetings of the board of supervisors. The authority conferred by this section [Code 1942, § 2888] is discretionary and not mandatory. Ops Atty Gen 1937-39, p 126.

It is optional with the board of supervisors as to whether it does or does not publish the proceedings of the board, under this section [Code 1942, § 2888].

Salaries and wages of county officials and employees must be included for record keeping purposes in claims docket listings and in monthly publication of expenses, because these expenditures are made out of county funds every month; board does not have to list individual salaries or wages of officials and employees in claims docket listings or in publication of proceedings, but can list total amount paid in salaries and wages. Montgomery, March 20, 1990, A.G. Op. #90-0174.

§ 19-3-35. Publication of proceedings; cumulative method.

The board of supervisors after each meeting shall have an itemized statement made of allowances, to whom, for what, and the amounts; a list of all contracts providing for the expenditure of money and the terms of payment thereof; a statement of all loans from sixteenth section funds, lieu land funds, and sinking, and other trust funds, setting forth to whom made, the amount, and the kind of security approved; a statement or list of all sales of timber, of all leases upon, including all leases for oil, gas and minerals upon, sixteenth section or lieu lands situated in the county or belonging to the county, showing to whom sold or made, description of land involved, the length of the term of any such lease, and the consideration therefor; and it shall also publish a recapitulation of all expenditures according to districts and also the county as a whole, and in such recapitulation the total expenses for each item shall be listed for each district, and in the total county recapitulation the total expended from each item shall be listed and same shall be published within fifteen (15) days after adjournment in some newspaper of general circulation published in the county, and if no such newspaper is published in the county, then in a newspaper published elsewhere in the state and having a general circulation in such county. The cost of publishing the same shall be paid for out of the general fund of the county. The cost of such publication shall not exceed one-half (½) of the rate now fixed by law for publishing legal notices, and in no event shall the cost of such publication exceed One Hundred Dollars ($100.00) in any one (1) month, save, however, in counties of classes 1 and 2 the board of supervisors may expend an amount not to exceed One Hundred Seventy-five Dollars ($175.00) per month for the publication of said cumulative digest of its proceedings as provided for above. If there be more than one newspaper published in the county, the board of supervisors shall advertise, as provided by law, for contracts for publishing such proceedings, and shall award the contract to the lowest bidder for a period of two (2) years. If no bid be made for the price above mentioned, then the proceedings shall be posted at the courthouse door as hereinafter provided. If there be no newspaper published in such county, then such proceedings shall be posted at the front courthouse door.

If any member of a board of supervisors or the chancery clerk shall fail, refuse or neglect to comply with the provisions of this section, he shall, upon conviction, be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars ($500.00) for such failure, refusal or neglect for each offense and, in addition thereto, shall be liable to a penalty of Five Hundred Dollars ($500.00), recoverable on his official bond by suit filed by any county or district attorney or any interested citizen, upon his official bond.

This shall not be construed to repeal Section 19-3-33, and where the verbatim proceedings are published as therein provided, this section shall not apply, it being intended hereby to provide a method of publishing the proceedings of the board of supervisors in addition to that now provided for by Section 19-3-33. Where publication is made under Section 19-3-33, this section shall not be construed so as to require any other and additional publication, or notice.

SOURCES: Codes, 1942, § 2889; Laws, 1932, ch. 190; Laws, 1938, ch. 324; Laws, 1946, ch. 418; Laws, 1948, ch. 425; Laws, 1958, ch. 218; Laws, 1980, ch. 333, eff from and after October 1, 1980.

Cross References — Inapplicability of publishing fee schedule to publication of proceedings of board of supervisors, see § 25-7-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A contract with the county cannot be implied or presumed, but must be stated in express terms and recorded on the official minutes as the action of the board of supervisors, and it is the responsibility of each person, firm or corporation contracting with a board of supervisors to see that the contract is legal and properly recorded. Burt v. Calhoun, 231 So. 2d 496 (Miss. 1970).

ATTORNEY GENERAL OPINIONS

An abstract or summary of the minutes of the board may be published, and it is not necessary to publish the minutes in full. The provisions of this section [Code 1942, § 2889] are mandatory unless the board publishes the minutes as required by Code 1942, § 2888. Ops Atty Gen 1937-39, p 126.

Salaries and wages of county officials and employees must be included for record keeping purposes in claims docket listings and in monthly publication of expenses, because these expenditures are made out of county funds every month; board does not have to list individual salaries or wages of officials and employees in claims docket listings or in publication of proceedings, but can list total amount paid in salaries and wages. Montgomery, March 20, 1990, A.G. Op. #90-0174.

Since there is no statute similar to Section 21-39-3 on county publishing contracts, the county may negotiate for such contracts, or may bid them out using Section 31-7-13 and/or Section 19-3-35 as a guideline. Coleman, March 22, 1996, A.G. Op. #96-0135.

Provisions of Section 19-3-35 are mandatory unless the board publishes minutes as required by Section 19-3-33. Fortier, April 12, 1996, A.G. Op. #96-0160.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-3-37. Privileges of supervisors.

Each member of the board of supervisors shall, during his term of office, be exempt from working on the roads, from serving in the militia, and from jury service.

SOURCES: Codes, 1857, ch. 59, art 11; 1871, § 1358; 1880, § 2140; 1892, § 285; 1906, § 303; Hemingway's 1917, § 3676; 1930, § 209; 1942, § 2884.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Jury § 160.

§ 19-3-39. Supervisors are conservators of the peace.

The members of the board of supervisors are conservators of the peace within their respective counties, and shall possess all the powers as such which belong to, or are conferred on, justices of the peace.

SOURCES: Codes, 1857, ch. 59, art 12; 1871, § 1359; 1880, § 2141; 1892, § 286; 1906, § 304; Hemingway's 1917, § 3677; 1930, § 210; 1942, § 2885.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Power vested in civil officers as conservators of the peace, see Miss. Const. Art. 6, § 167.

Judges and chancellors being conservators of the peace, see §§ 9-1-23, 99-15-1.

Fees of justices of the peace acting as conservators, see § 25-7-25.

Arrests by conservators of the peace, see § 99-3-1.

ATTORNEY GENERAL OPINIONS

It is the sheriff's duty and power to appoint bailiffs, subject to the power of the board of supervisors should he fail in this duty, and subject to the power of the court to appoint riding bailiffs and to remove bailiffs for cause. Evans, November 25, 1998, A.G. Op. #98-0687.

§ 19-3-40. Power of board to adopt, modify, alter, or repeal orders, resolutions or ordinances not inconsistent with law.

(1) The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and any such board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsections (2) and (3) of this section, the powers granted to boards of supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

Except as provided in subsection (2) of this section, such orders, resolutions or ordinances shall apply countywide unless the governing authorities of any municipality situated within a county adopt any order, resolution or ordinance governing the same general subject matter. In such case the municipal order, resolution or ordinance shall govern within the corporate limits of the municipality.

(2) In any county where U.S. Interstate 20 and U.S. Highway 49 intersect, having a population of greater than one hundred forty-one thousand (141,000) but less than one hundred fifty-one thousand (151,000) according to the 2010 federal decennial census , the board of supervisors may adopt orders, resolutions and ordinances under subsection (1) of this section for a clearly defined geographic area. The order, resolution or ordinance shall describe the affected geographic area by zoning district, section lines or other discernable boundaries. The order, resolution or ordinance also shall state specific findings to support its purpose and need within the geographic area.

(3) This section shall not authorize the board of supervisors of a county to (a) levy taxes other than those authorized by statute or increase the levy of any authorized tax beyond statutorily established limits, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for county elections or establish any new elective office, (d) use any public funds, equipment, supplies or materials for any private purpose, (e) regulate common carrier railroads, (f) grant any donation, or (g) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the county does not have a property interest; unless such actions are specifically authorized by another statute or law of the State of Mississippi.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 60; Laws, 1989, ch. 526, § 2; reenacted, Laws, 1990, ch. 418, § 2; Laws, 2012, ch. 478, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted “subsections (2) and (3)” for “subsection (2)” near the beginning of the last sentence of (1); in the second paragraph of (1), added “Except as provided in subsection (2) of this section” to the beginning of the first sentence, and substituted “unless” for “except when” following “such orders, resolutions or ordinances shall apply countywide” in the first sentence; added (2); and redesignated former (2) as (3).

JUDICIAL DECISIONS

1. In general.

County Board of Supervisors had the power and authority to enact its Sexually Oriented Business Ordinance under the Home Rule Statute, Miss. Code Ann. § 19-3-40. Freelance Entm’t, LLC v. Sanders, 280 F. Supp. 2d 533 (N.D. Miss. 2003).

A county had standing under § 21-1-31 to object to the annexation of county territory by a city since it was a party interested in, affected by or aggrieved by the annexations. Furthermore, a combined reading of §§ 11-45-17, 11-45-19, and 19-3-47(1)(b) vested in the county, acting by and through its board of supervisors, authority to exercise its standing and to employ counsel and participate fully in each annexation and confirmation proceeding. Harrison County v. City of Gulfport, 557 So. 2d 780, 17 A.L.R.5th 974 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

Granting of nonexclusive cable television franchise is properly matter of governmental concern and is county affair; county may grant such franchise. McKenzie, Jan. 10, 1990, A.G. Op. #90-0001.

County home rule statute would authorize county Board of Supervisors latitude in purchase of special items that may be required for plainclothes or undercover operations; it is not intended, however, to authorize purchases of normal street apparel. Grimmett, Jan. 24, 1990, A.G. Op. #90-0006.

County may contract with private corporation to provide necessary equipment and monitoring services in order to operate Home Confinement Program. Haque, Jan. 31, 1990, A.G. Op. #90-0084.

Home rule provision gives Hancock County free reign to adopt misdemeanor leash laws and to impose such misdemeanor penalties for violations which they deem appropriate; additionally, Hancock County is required to apply these regulations countywide. Gex, Feb. 8, 1990, A.G. Op. #90-0073.

There is no authority empowering county or its sheriff to charge "turn-key" fee; county "home rule" statute prohibits county from levying any tax except where expressly authorized. Whitten, Feb. 22, 1990, A.G. Op. #90-0119.

There is no authority for Board of Supervisors to participate in construction of dam in order to maintain desirable level in lake at all times during year. Dulaney, June 6, 1990, A.G. Op. #90-0395.

Road sign designation program would not be donation; purpose of promoting cleanliness of county roads and instilling pride in public lands would not be private purpose, even though some private benefit of advertisement may occur. Eleuterius, August 15, 1990, A.G. Op. #90-0593.

Granting of funds to foundation, even one formed to support public economic district, constitutes donation; in absence of any law empowering such donation, board may not lawfully appropriate funds for support of joint economic development foundation. Downs, Oct. 4, 1990, A.G. Op. #90-0727.

Without specific authority, county may not contribute funds for office space for state agency such as Mississippi Employment Security Commission. Gordon, May 16, 1991, A.G. Op. #91-0356.

County board of supervisors does not have authority to grant funds to a nonprofit community organization. Shelton, Jan. 29, 1992, A.G. Op. #92-0031.

The board of supervisors of a county may entertain an ordinance to provide for handling of abandoned property, to the extent such is not addressed elsewhere under the law and provided such ordinance comports with due process and otherwise passes constitutional muster. Best, June 24, 1992, A.G. Op. #92-0393.

Monetary rewards to county employees under employee suggestion program for suggestions that are implemented would constitute unauthorized donations. Griffin, Sept. 2, 1992, A.G. Op. #92-0632.

County boards of supervisors, pursuant to Miss. Code Section 19-3-40, may enact reasonable zoning restrictions touching on bingo operations and/or may enact reasonable ordinances relating to bingo hours of operation; County sheriffs have no authority to enact ordinances or regulations regarding bingo, but rather are charged with duty and responsibility to enforce laws of state and lawful ordinances of county they serve. Scott, Jan. 20, 1993, A.G. Op. #93-0014.

Miss. Code Section 19-3-40, "home rule" statute, allows county board to provide itself with offices. McKenzie, Feb. 1, 1993, A.G. Op. #92-0982.

Under home rule statute, Miss. Code Section 19-3-40, board of supervisors may in its discretion, employ part-time secretary, if such is determined to be reasonable and necessary to accomplish needs of county. McKenzie, Feb. 1, 1993, A.G. Op. #92-0982.

Miss. Code Section 19-3-40 gives board of supervisors, but not sheriff, authority to contract with phone company for provision of pay telephone service to prisoners; phones would remain property of phone company, and therefore contract would not be one for construction or for purchase of commodities or equipment; thus, contract for phone service would not need to be awarded through public bidding process. Jackson, Feb. 25, 1993, A.G. Op. #93-0090.

Under Miss. Code Section 19-3-40, municipality could not pass ordinance re matter which state has preempted, either through express language or through regulation of particular topic; most traffic regulations have been so preempted by state laws. Baker, Mar. 31, 1993, A.G. Op. #93-0036.

Miss. Code Section 19-3-40, home rule statute, gives boards of supervisors power "to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law." Griffith, Apr. 7, 1993, A.G. Op. #93-0153.

Under Miss. Code Section 19-3-40, county cannot use equipment, supplies or materials for any private purpose, nor may county grant any donation. Gamble, Apr. 14, 1993, A.G. Op. #93-0183.

County counterpart to municipal home rule statute is Miss. Code Section 19-3-40. Pope, Apr. 14, 1993, A.G. Op. #93-0069.

Miss. Code Section 19-3-40, "home rule" statute, allows specific county to enact lawful ordinances regulating use of sand beach, and to provide penalties for violation thereof, to be enforced by sheriff. Meadows, Apr. 21, 1993, A.G. Op. #93-0226.

With regard to boards of supervisors, Miss. Code Section 19-3-40 gives counties power to adopt orders and resolutions with respect to county affairs, property and finances "for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the state". Chaffin, May 26, 1993, A.G. Op. #93-0346.

If Board of Supervisors determine, consistent with fact, that additional public parking spaces are needed for county buildings and county business, Board may entertain lease of private property for such purposes. Gex, Nov. 22, 1993, A.G. Op. #93-0733.

Section 19-3-40 does not authorize the board of supervisors to make any donation to a private nonprofit corporation. Cossar, February 8, 1995, A.G. Op. #95-0009.

If a determination is made by a board of supervisors that additional public parking is needed for the county courthouse, then the board may lease private property for such purposes. Also, see section 19-7-1. Dickerson, March 2, 1995, A.G. Op. #95-0080.

Under the "Home Rule" statutes, established in Sections 21-17-5 and 19-3-40, a political subdivision can not pass an ordinance upon a matter which the state has preempted, either through express language or through regulation of a particular topic. Bradley, June 2, 1995, A.G. Op. #95-0399.

Funds spent for flowers for sick or deceased employees, while made by a corporation which is wholly owned by a community hospital, would still be considered an indirect gift or donation, and therefore prohibited by Section 19-3-40. Genin, June 12, 1995, A.G. Op. #95-0339.

Under Section 19-3-40, if private funds are donated with the express purpose of providing flowers, and those funds are kept separate from other funds, such expenditures would be allowed. Genin, June 12, 1995, A.G. Op. #95-0339.

Section 19-3-40, generally referred to as county home rule, would allow the county to enter into a contract with a non-profit corporation or association for animal control and for an animal shelter. However, the home rule does not allow the Board to abridge the rights and duties of the sheriff to enforce laws governing strays and rabies. Gamble, August 14, 1995, A.G. Op. #95-0556.

Pursuant to the authority granted by Section 19-3-40, counties may place speed bumps on any county road, including any streets which have been dedicated to the county and accepted by the county as a county road, if the board of supervisors finds, consistent with fact, that speed bumps are necessary to protect the health and safety of the citizens of the county. Trapp, October 26, 1995, A.G. Op. #95-0684.

Section 19-3-40 does not authorize the Board of Supervisors to purchase fuel for the constables' vehicles while being used in an official capacity since a constable is compensated for necessary travel pursuant to Sections 25-7-27(c) and 25-3-41 of the Mississippi Code of 1972. Moss, March 6, 1996, A.G. Op. #96-0079.

Federal Wage and Hours Laws will take precedent over any conflicting state laws or local ordinances, or orders entered by the board of supervisors. The county may settle such a claim. See Sections 25-1-47. Barry, June 14, 1996, A.G. Op. #96-0228.

The county home rule statute enables the board of supervisors to regulate the housing of large wild animals such as lions, tigers, cougars, etc. Section 19-3-40 provides that any action taken pursuant to this section must apply county-wide, not just to the specific municipality or resident in question. Spragins, August 9, 1996, A.G. Op. #96-0397.

Section 19-3-40, the "home rule" statute, authorizes the Board of Supervisors to appoint and pay a special prosecutor when the regular county prosecutor recuses himself from a case to be tried in justice court. Murphree, December 6, 1996, A.G. Op. #96-0819.

A board of supervisors is authorized to establish a first responder system to assist emergency personnel, and may do so through either through fire and rescue, police or civil defense units that operate within the framework of fire, police and civil defense departments. Lamar, July 11, 1997, A.G. Op. #97-0371.

If a board of supervisors finds that the business of the county requires the purchase of a building for office space for county employees, that a particular tract and building is suitable for the needs of the county, and that the purchase price therefor is at or below the fair market value thereof, such board of supervisors may then pursuant to this section utilize public funds to purchase and equip such building for usage as office space by county employees. Shaw, Dec. 19, 1997, A.G. Op. #97-0802.

A board of supervisors may neither invest in a corporation nor obligate the full faith and credit of the county as guarantor of a loan to such corporation. McWilliams, January 9, 1998, A.G. Op. #97-0799.

Power is vested in a county to lease a building for use as a community center, but the lease cannot bind the county beyond the term of the present board of supervisors; also, the county may lease property from a private entity under terms which would grant the county less than exclusive use of the premises, but it cannot make what would amount to an unauthorized donation by erecting or constructing a building on property is has leased for a time that is less than the expected life or depreciation of the building. Hall, January 9, 1998, A.G. Op. #97-0809.

A county board of supervisors can not legally provide dirt for the use of a baseball association and/or provide for maintenance of any kind to the baseball field owned by the association. Pierce, April 24, 1998, A.G. Op. #98-0189.

A board of supervisors may not pay for the educational training of a non-employee in return for a promise, written or otherwise, to work for the county for a specified period of time following completion of the education for which the county has paid. Lamar, October 30, 1998, A.G. Op. #98-0667.

A board of supervisors may grant an exclusive franchise and license for placement of pay telephones in the county courthouse. McWilliams, October 30, 1998, A.G. Op. #98-0657.

It is the sheriff's duty and power to appoint bailiffs, subject to the power of the board of supervisors should he fail in this duty, and subject to the power of the court to appoint riding bailiffs and to remove bailiffs for cause. Evans, November 25, 1998, A.G. Op. #98-0687.

By virtue of the "home rule" powers granted by this section and by virtue of the powers over roads granted by Miss. Code Section 19-3-41, a board of supervisors may defray the cost of relocation of a sewer line owned by a utility district which is presently located upon county road right of way. Hollimon, December 18, 1998, A.G. Op. #98-0745.

There was no prohibition to a county allowing a local union to use county owned voting devices in exchange for an opportunity to register voters and educate voters on the use of the voting devices where no tax dollars would be utilized in the endeavor; thus, if the county board of supervisors found, pursuant to "home rule," that allowing the local union to utilize the voting devices was beneficial to the county, they could authorize such use. Martin, April 16, 1999, A.G. Op. #99-0199.

Cities and counties may pay the educational expenses of employees if the governing authorities find on the minutes, consistent with fact, that the payment of educational expenses for the certification of an employee would benefit the municipality or county; in order for such reimbursement not to constitute a prohibited donation, a policy should be implemented or an agreement entered into with the employee which requires the employee to reimburse the governing authority the expense of the education if the employee leaves the governing authority before a reasonable period of employment has expired; further, a county may also reimburse county employees for the expenses of taking vocational or college-level courses which are directly related to their job as long as steps are taken to insure the reimbursement does not constitute an unpermitted donation. Chapman, June 4, 1999, A.G. Op. #99-0222.

The justice court clerk should notify the board of supervisors of the recusal of the prosecutor so that the board of supervisor may make the appointment of a special prosecutor as soon as possible; the appointment should be spread upon the minutes of the board of supervisors and the special prosecutor would serve as prosecutor only for the case in which he or she is appointed. Bragg, August 20, 1999, A.G. Op. #99-0426.

If a county board of supervisors finds consistent with fact, and encompasses such findings in an order spread upon its minutes, that becoming a member of the Mississippi Public Lands Coalition is in the best interests of the county and that the expenditure of membership dues will assist the financial standing of the county, then the board is authorized to pay membership dues to such coalition and to pay additional costs, if requested, relative to actions taken by the coalition. Lehmann, Dec. 3, 1999, A.G. Op. #99-0645.

A county board of supervisors, upon the sale or lease of its community hospital, could assume for the benefit of former county employees the duties of sponsor of the defined contribution plan and the pension plan now offered by the hospital. Griffith, March 30, 2000, A.G. Op. #2000-0170.

Section 19-9-29 is a general law specifying the manner of investing and types of investments into which surplus county funds may be placed, and, therefore, Section 19-3-40 does not permit boards of supervisors to invest otherwise. Griffith, April 7, 2000, A.G. Op. #2000-0173.

Counties and municipalities may sell advertising on their public web sites and may regulate the content and subject of their advertisements, and the identity of their advertisers to promote the public safety, health, or welfare. McLeod, June 12, 2000, A.G. Op. #2000-0278.

A county board of supervisors may set a user fee to be charged by a private contractor for the provision of on-line services to county residents, including the payment of real property and motor vehicle taxes via the Internet. Haque, June 20, 2000, A.G. Op. #2000-0270.

Charging "dues" for fire protection constitutes a tax that is not authorized by statute and is, therefore, prohibited. Wilburn, July 14, 2000, A.G. Op. #2000-0158.

A county board of supervisors may charge actual damages for use of county rights of way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of-way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

Any ordinance adopted by a county board of supervisors must have countywide application. Prichard, Sept. 14, 2001, A.G. Op. #01-0585.

A county may adopt an ordinance to require the licensing of domesticated animals by the county; however, charging a fee for the license is tantamount to levying a tax, which is prohibited by subsection (2). Eger, Apr. 13, 2001, A.G. Op. #01-0203.

A county board of supervisors, exercising authority under County Home Rule, cannot adopt an ordinance with countywide applicability regulating and restricting the removal or mining of dirt within a specific distance of public roads and road rights-of-way; however, a county may petition the Board of Mississippi Geological, Economic and Topographical Survey for relief and, in addition, may recover civilly for damages to roads caused by undermining and/or excavation of adjacent lands. Griffith, May 31, 2002, A.G. Op. #02-0300.

A board of supervisors could adopt a resolution for the county sheriff's department to charge a fee for performing criminal background checks, fingerprinting, etc., and the funds generated thereby should be paid into the general fund on a monthly basis. Trapp, Jr., June 7, 2002, A.G. Op. #02-0286.

The board of supervisors may not pay rent for office space for a United States Congressman. Bridges, June 7, 2002, A.G. Op. #02-0316.

A county board of supervisors lacked authority to approve a request for a grant submitted by a health service organization that is a proprietorship and not a governmental entity. Dulaney, Sept. 27, 2002, A.G. Op. #02-0563.

Section 19-3-40 does not authorize a county to use an essential governmental function such as law enforcement as a device to advertise private businesses. Williams, Mar. 10, 2003, A.G. Op. 03-0069.

A county board of supervisors may place the issue of Sunday sales of beer and light wines before the electorate by means of a non-binding referendum. Hemphill, Apr. 4, 2003, A.G. Op. 03-0061.

Because the shelter established by Interfaith Hospitality is not a residential group home as defined by Section 19-5-93(q), therefore, a county board of supervisors does not have the authority to appropriate funds to that organization. Meadows, May 23, 2003, A.G. Op. 03-0221.

Harrison County Board of Supervisors may temporarily restrict access to areas of the public sand beach for two to three months for the benefit of the Least Terns and/or other nesting birds and may establish permanent and temporary sanctuaries for birds on the public sand beach in the county. Dawkins, June 6, 2003, A.G. Op. 03-0254.

There is no authority for a board of supervisors to make a donation to a private nonprofit corporation. McWilliams, Aug. 8, 2003, A.G. Op.03-0404.

A board of supervisors has the authority to lease private property to locate a communications tower. The terms of the lease may provide for the county to maintain, work or construct such roads as are necessary or convenient to provide the county access to the leased premises. However, there is no authority for a county to maintain private roads that are not necessary for county purposes in exchange for consideration of any sort. Munn, Dec. 12, 2003, A.G. Op. 03-0623.

A county board of supervisors can contract to pay a construction management firm a fixed fee to assist the county in locating grants that can provide funding for construction of a new jail which is based on a percentage of the total construction price of the facility as long as it is determined by the board to be reasonable compensation for the management services performed. Trapp, Jan. 1, 2004, A.G. Op. 03-0662.

This section allows a county to contract with a humane society to maintain an animal shelter. Any contract providing for these services would be in addition to, and would not supplant, the sheriff's duties as provided in § 41-53-11. Spragin, Jan. 21, 2004, A.G. Op. 03-0701.

This section authorizes a county to contract with a private company to provide alternative sentencing services, including house arrest and probation services, and to compensate the private company for such services. Such a contract could include a provision whereby the county would pay for such services when the defendant is indigent or unable to pay as a result of medical conditions. Young, July 7, 2004, A.G. Op. 04-0287.

Pursuant to this section and § 19-3-40, a county not designated in § 19-5-51 and may contract for animal services and thereby operate an animal shelter for use by county residents for the temporary and/or permanent shelter of animals of all kinds. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

This section gives Lafayette County the authority to enact a "leash law" and impose associated fines for the violation. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

Pursuant to this section and § 19-3-41, Lafayette County has the authority to provide various services at a county-owned or supported animal shelter such as a "drop off" and/or "pick up" service for unwanted or abandoned animals. the county may but is not required to provide these services. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

A county may establish an animal control department and hire employees to serve as "animal control officers" with said officers not being appointed as deputy sheriffs. Nowak, Jan. 25, 2005, A.G. Op. 04-0604.

An animal control officer who is not a deputy sheriff under the supervision and control of the sheriff would not have authority to enforce county animal control ordinances. Nowak, Jan. 25, 2005, A.G. Op. 04-0604.

County may pay for the physical required for acquisition of a commercial driver's license to allow county employees to drive county vehicles. Trapp, Mar. 15, 2005, A.G. Op. 05-0101.

Section 19-3-41 authorizes a county to enter in a loan agreement with the Tennessee Valley Authority to purchase real property, and pursuant to Section 19-3-40 the county may purchase federal property at auction for an amount supported by appraisal and duly authorized by the board of supervisors. Phillips, Mar. 23, 2005, A.G. Op. 05-0137.

A county board may contract with a fire protection service or volunteer fire department in order to provide fire protection services for the county and, pursuant to such a contract the board may allow the service or department to use a county-owned vehicle and other county equipment. Nowak, Mar. 25, 2005, A.G. Op. 05-0031.

A county may entertain an ordinance to provide for handling and disposition of lost or abandoned property to the extent such is not addressed elsewhere under the law, and further provided such ordinance comports with due process and otherwise passes constitutional muster. If there is no county ordinance in place that deals with the disposition of lost property, it would probably be safe for the county to follow the notice guidelines established in Section 21-39-21. Stewart, May 20, 2005, A.G. Op. 05-0181.

A county board of supervisors would not be authorized to conduct or order a non-binding referendum to determine residents' preference as to which school their children should attend. Meadows, July 22, 2005, A.G. Op. 05-0338.

A county board of supervisors would not be precluded by state law from employing a lobbyist or consultant to perform governmental relations work. Clayton, July 29, 2005, A.G. Op. 05-0357.

A county has authority to accept a donation from a developer for the specific purpose of providing services to a proposed development such as law enforcement, fire protection, solid waste removal and emergency services. Matthews, Nov. 3, 2006, A.G. Op. 06-0538.

Pursuant to the authority granted in the county "home rule" statute, a county board of supervisors, upon a finding consistent with fact that such an expenditure is in the best interest of the citizens of the county, may expend funds for the operation and maintenance of a "Fire Prevention Safety Weather Simulation Trailer" within the county. Nowak, Nov. 10, 2006, A.G. Op. 06-0537.

No provision of state law can be found which would permit the board of supervisors to donate office space in the county courthouse to a state representative. Webb, Dec. 14, 2006, A.G. Op. 06-0601.

A county board of supervisors may authorize placing on county vehicles signs, decals or stickers advertising the Crime Stoppers program. Huggins, Dec. 22, 2006, A.G. Op. 06-0618.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning a casino proposed by an Indian tribe on lands owned by the tribe in the county, and does not have to wait until the next regular election year. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Guice, March 7, 2007, A.G. Op. #07-00108, 2007 Miss. AG LEXIS 104.

For the Tunica County Utility District, which is county-owned, to fund the construction of connecting water lines to a privately owned utility company would constitute an unlawful donation under Miss. Code Ann. § 19-3-40 and Miss. Const. of 1890, Art. 4 § 66, unless the private utility gives adequate consideration, which may take into account the value of and cost to replicate the backup service that would be provided to the private utility. Dulaney, March 15, 2007, A.G. Op. #07-00123, 2007 Miss. AG LEXIS 62.

Disallowing a property tax homestead exemption for failure to pay delinquent garbage bills constitutes an increase in taxes not authorized in statute, and therefore is prohibited by Miss. Code Ann. § 19-3-40(2)(a). Burgoon, March 2, 2007, A.G. Op. #07-00060, 2007 Miss. AG LEXIS 86.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning proposed gaming operations by an Indian tribe on lands owned by the tribe in the county. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Yancey, March 26, 2007, A.G. Op. #07-00178, 2007 Miss. AG LEXIS 123.

§ 19-3-41. Jurisdiction and powers generally.

(1) The boards of supervisors shall have within their respective counties full jurisdiction over roads, ferries and bridges, except as otherwise provided by Section 170 of the Constitution, and all other matters of county police. They shall have jurisdiction over the subject of paupers. They shall have power to levy such taxes as may be necessary to meet the demands of their respective counties, upon such persons and property as are subject to state taxes for the time being, not exceeding the limits that may be prescribed by law. They shall cause to be erected and kept in good repair, in their respective counties, a good and convenient courthouse and a jail. A courthouse shall be erected and kept in good repair in each judicial district and a jail may be erected in each judicial district. They may close a jail in either judicial district, at their discretion, where one (1) jail will suffice. They shall have the power, in their discretion, to prohibit or regulate the sale and use of firecrackers, roman candles, torpedoes, skyrockets, and any and all explosives commonly known and referred to as fireworks, outside the confines of municipalities. They shall have and exercise such further powers as are or shall be conferred upon them by law. They shall have authority to negotiate with and contract with licensed real estate brokers for the purpose of advertising and showing and procuring prospective purchasers for county-owned real property offered for sale in accordance with the provisions of Section 19-7-3.

(2) The board of supervisors of any county, in its discretion, may contract with a private attorney or private collection agent or agency to collect any type of delinquent payment owed to the county including, but not limited to, past due fees, fines and assessments, delinquent ad valorem taxes on personal property and delinquent ad valorem taxes on mobile homes that are entered as

personal property on the mobile home rolls, or with the district attorney of the circuit court district in which the county is located to collect any delinquent fees, fines and other assessments. Any such contract may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the county and shall not be reduced by any collection costs or fees. There shall be due to the county from any person whose delinquent payment is collected pursuant to a contract executed under this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state. However, in the case of delinquent fees owed to the county for garbage or rubbish collection or disposal, only the amount of the delinquent fees may be collected and no amount in addition to the delinquent fees may be collected if the board of supervisors of the county has notified the county tax collector under Section 19-5-22 for the purpose of prohibiting the issuance of a motor vehicle road and bridge privilege license tag to the person delinquent in the payment of such fees. Any private attorney or private collection agent or agency contracting with the county under the provisions of this subsection shall give bond or other surety payable to the county in such amount as the board of supervisors deems sufficient. Any private attorney with whom the county contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the county contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi. Neither the county nor any officer or employee of the county shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the county has contracted under the provisions of this subsection. The Mississippi Department of Audit shall establish rules and regulations for use by counties in contracting with persons or businesses under the provisions of this subsection.

(3) In addition to the authority granted under subsection (2) of this section, the board of supervisors of any county, in its discretion, may contract with one or more of the constables of the county to collect delinquent criminal fines imposed in the justice court of the county. Any such contract shall provide for payment contingent upon successful collection efforts, and the amount paid to a constable may not exceed twenty-five percent (25%) of the amount which the constable collects. The entire amount of all delinquent criminal fines collected under such a contract shall be remitted by the constable to the clerk of the justice court for deposit into the county general fund as provided under Section 9-11-19. Any payments made to a constable pursuant to a contract executed under the provisions of this section may be paid only after presentation to and approval by the board of supervisors of the county.

(4) If a county uses its own employees to collect any type of delinquent payment owed to the county, then from and after July 1, 1999, the county may

charge an additional fee for collection of the delinquent payment provided the payment has been delinquent for ninety (90) days. The collection fee may not exceed twenty-five percent (25%) of the delinquent payment if the collection is made within this state and may not exceed fifty percent (50%) of the delinquent payment if the collection is made outside this state. In conducting collection of delinquent payments, the county may utilize credit cards or electronic fund transfers. The county may pay any service fees for the use of such methods of collection from the collection fee, but not from the delinquent payment.

(5) In addition to such authority as is otherwise granted under this section, the board of supervisors of any county may expend funds necessary to maintain and repair, and to purchase liability insurance, tags and decals for, any personal property acquired under the Federal Excess Personal Property Program that is used by the local volunteer fire department.

(6) The board of supervisors of any county, in its discretion, may expend funds to provide for training and education of newly elected or appointed county officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the board of supervisors. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the board of supervisors.

(7) The board of supervisors of any county may expend funds to purchase, maintain and repair equipment for the electronic filing and storage of filings, files, instruments, documents and records using microfilm, microfiche, data processing, magnetic tape, optical discs, computers or other electronic process which correctly and legibly stores and reproduces or which forms a medium for storage, copying or reproducing documents, files and records for use by one (1), all or any combination of county offices, employees and officials, whether appointed or elected.

(8) In addition to the authority granted in this section, the board of supervisors of any county may expend funds as provided in Section 29-3-23(2).

(9) The board of supervisors of any county may perform and exercise any duty, responsibility or function, may enter into agreements and contracts, may provide and deliver any services or assistance, and may receive, expend and administer any grants, gifts, matching funds, loans or other monies, in accordance with and as may be authorized by any federal law, rule or regulation creating, establishing or providing for any program, activity or service. The provisions of this subsection shall not be construed as authorizing any county, the board of supervisors of any county or any member of a board of supervisors to perform any function or activity that is specifically prohibited under the laws of this state or as granting any authority in addition to or in conflict with the provisions of any federal law, rule or regulation.

(10) The board of supervisors of any county may provide funds from any available source to assist in defraying the actual expenses to maintain an office as provided in Section 9-1-36. The authority provided in this subsection shall apply to any office regardless of ownership of such office or who may be making any lease payments for such office.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (3); 1857, ch. 59, art 16; 1871, § 1363; 1880, § 2144; 1892, § 289; 1906, § 307; Hemingway's 1917, § 3680; 1930, § 214; 1942, § 2890; Laws, 1896, ch. 132; Laws, 1956, ch. 204; Laws, 1987, ch. 383; Laws, 1990, ch. 532, § 1; Laws, 1993, ch. 455, § 1; Laws, 1994, ch. 521, § 30; Laws, 1995, ch. 496, § 1; Laws, 1995, ch. 550, § 1; Laws, 1998, ch. 482, § 1; Laws, 1999, ch. 369, § 3; Laws, 1999, ch. 516, § 1; Laws, 2000, ch. 363, § 1; Laws, 2000, ch. 515, § 1; Laws, 2004, ch. 534, § 2; Laws, 2010, ch. 517, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 3 of ch. 369 Laws, 1999, effective from and after its passage (approved March 15, 1999), amended this section. Section 1 of ch. 516, Laws, 1999, effective from and after its passage (approved April 15, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 516, Laws, 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 363, Laws, 2000, effective from and after July 1, 2000 (approved April 17, 2000), amended this section. Section 1 of ch. 515, Laws, 2000, effective from and after July 1, 2000 (approved April 30, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 515, Laws, 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of (9). The word "paragraph" was changed to "subsection". The Joint Committee ratified the correction at its July 22, 2010, meeting.

Amendment Notes — The 2010 amendment, in the first sentence in (2), inserted "and assessments" and made a related change, and added the language beginning "or with the district attorney of the circuit court district" through to the end; and in (4), substituted "twenty-five percent (25%)" for "fifteen percent (15%)" and "fifty percent (50%)" for "twenty-five percent (25%)."

Cross References — Jurisdiction conferred by Constitution, see Miss. Const. Art. 6, § 170.

Power to provide homes, farms or asylums for the aged, infirm, or unfortunate, see Miss. Const. Art. 14, § 262.

Zoning plans, see §§ 17-1-1 et seq.

Board of supervisors authorized to enter into collection agreements with private attorney, collection agency or others to collect cash appearance bonds from certain defendants, see § 17-25-21.

Counties and municipalities authorized to enter into agreements with approved business enterprises under certain circumstances, see § 17-25-23.

Counties and municipalities authorized to enter into fee-in-lieu agreements, with certain approved business enterprises, see § 17-25-23.

Establishment and operation of nursing homes, see §§ 19-5-31 et seq.

Authority of boards of supervisors to regulate massage parlors and public displays of nudity, see § 19-5-103.

Authority of board of supervisors to promulgate, adopt and enforce ordinances to regulate establishments where public displays of nudity are present, see § 19-5-104.

Employment of person to safeguard county lands, see § 19-7-15.

Authority to provide patrol boats for sheriffs in certain counties, see § 19-25-17.

Powers of the county board of supervisors with respect to creation of a county or regional railroad authority, see §§ 19-29-7, 19-29-9.

Powers of municipal governing authorities, see § 21-17-5.

Authority of boards of supervisors to fill vacancies in county or county district offices, see § 23-15-839.

Power of boards to create geographic information systems and prepare multipurpose cadastre, and to borrow funds for such purposes, see §§ 25-58-1 et seq.

Power to exempt certain property from taxation, see § 27-31-101.

Power to levy ad valorem taxes, see § 27-39-303.

Jurisdiction over school lands and funds arising from disposition thereof, see § 29-3-1.

Proceeds of sale of lieu lands, see § 29-3-23.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

Authority to create a health department, see § 41-3-43.

County mosquito control commission, see § 41-27-1.

Authority to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

Paupers generally, see §§ 43-31-1 et seq.

Authority to work county convicts on county roads or other public county works, see § 47-1-19.

Convicts leasing, hiring, or public service work, see §§ 47-1-19 et seq.

Keeping county offenders in municipal jails, see § 47-1-43.

Authority to acquire land for state parks, forests, etc., see § 55-3-13.

Authority to convey rights of way and easements for construction of roadways and parkways by federal government, see § 55-5-5.

Bridge and park commissions generally, see §§ 55-7-1 et seq.

Authority to create a county park commission and establish a county park system, see §§ 55-9-81 et seq.

Additional powers of municipalities to acquire, own and lease projects for the purpose of promoting industry and trade, see § 57-3-9.

Authority to establish standard industrial parks and districts, see § 57-5-17.

Right of eminent domain in acquisition of land for standard industrial park, see § 57-5-21.

Authority to appropriate money for use and benefit of port of entry, see § 59-1-31.

Membership in Rivers and Harbors Association, see § 59-1-35.

Acquiring and equipping airport, see § 61-5-73.

General supervision over public highways, see § 65-7-115.

Inspection of roads, bridges, and ferries, by board of supervisors, see § 65-7-117.

Levy of tax for road and bridge purposes, see § 65-15-3.

Creation of bridge commission, see §§ 65-25-43 et seq.

Authority of counties bordering on Pearl River to construct, operate, and maintain toll bridges and adjacent roadways across Pearl River, see § 65-23-305.

Authority of counties bordering on Pearl River to issue bridge revenue bonds to pay the cost of bridges across Pearl River, see § 65-23-311.

Powers and duties of governing bodies of counties issuing bonds to pay for construction of bridges across Pearl River, see § 65-23-325.

Authority to establish and license ferries, see § 65-27-1.

Authority to erect sea walls in certain counties, see §§ 65-33-1 et seq.

Authority to levy special tax for sea wall purposes, see § 65-33-41.

Local system bridge replacement and rehabilitation program to assist counties and municipalities in the replacement and rehabilitation of certain bridges, see § 65-37-1 et seq.

Appropriations to aid in the control and eradication of insect pests, rodents, fire ants and the like, see § 69-25-33.

Authority to appropriate money for suppression of intoxicating liquors or narcotics, see § 99-27-37.

Authority of board of supervisors of any county to hire a county victim assistance coordinator, see § 99-36-7.

JUDICIAL DECISIONS

1. In general.
2. Roads, ferries, and bridges.
3. Tax levies.
4. Courthouses and jails.
5. Police powers.
6. Miscellaneous.

1. In general.

Boards of supervisors have no implied powers and all of their acts must be authorized by law and they can exercise only such powers as are expressly conferred by statute, or which are necessarily implied. State ex rel. Patterson v. Board of Supvrs., 233 Miss. 240, 102 So. 2d 198 (1958), adhered to, 239 Miss. 671, 123 So. 2d 695 (1960), corrected, 239 Miss. 676, 125 So. 2d 91 (1960), but see Cook b. Board of Supvrs., 571 So. 2d 932 (Miss. 1990).

Since publication of notice of an election to determine whether a power district should be established is a fundamental requirement of the statute, such jurisdictional fact must be specifically adjudicated in the minutes of the board of supervisors, and cannot be supplied by inference or other information outside the minutes of the board. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446 (1957).

An order of the board of supervisors purporting to create an electric power district, which failed to affirmatively adjudicate that any notice of the election was published, and, if so, how, where and when it was published, was void. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446 (1957).

Boards of supervisors can bind counties, or districts therein, only when acting within their authority and in the mode and manner by which this authority is to be exercised under the statutes, and their contracts and every other substantial action taken by them must be evidenced by entries on their minutes, and can be evidenced in no other way. Board of Supvrs. v. Dawson, 208 Miss. 666, 45 So. 2d 253 (1950).

Persons dealing with board of supervisors must take notice of its powers, and cannot acquire rights beyond authorized powers. De Soto County v. Stranahan, Harris & Oatis, 159 Miss. 23, 131 So. 640 (1931).

The board of supervisors must conform to the statutory method in performing their constitutional duties. Board of Supvrs. v. Snellgrove, 103 Miss. 898, 60 So. 1023 (1913).

And such authority and powers must be exercised within the limits of the county from which the members of the board are elected. Board of Supvrs. v. Snellgrove, 103 Miss. 898, 60 So. 1023 (1913).

The powers and authority of the board of supervisors is limited strictly to those conferred by statute. Adams v. First Nat'l Bank, 103 Miss. 744, 60 So. 770 (1913).

Defects in the proceedings and judgments of a board of supervisors not jurisdictional in their nature are unavailing in a collateral proceeding to defeat the action of the board. Hinton v. Board of Supvrs., 84 Miss. 536, 36 So. 565 (1904).

Any judgment of the board of supervisors may be attacked on the ground of fraud or corruption when seasonably set up and pleaded. Hinton v. Board of Supvrs., 84 Miss. 536, 36 So. 565 (1904).

In matters in which the board of supervisors have limited jurisdiction its record must show jurisdictional facts, but need not set out the evidence thereof. Hinton v. Board of Supvrs., 84 Miss. 536, 36 So. 565 (1904).

The board of supervisors has ordinarily no power to review, reverse, or vacate its own judicial action after final adjournment. Keenan v. Harkins, 82 Miss. 709, 35 So. 177 (1903).

A board of supervisors is not bound by the acts of its predecessors unless such acts were within the scope of their authority. Jefferson County v. Grafton, 74 Miss. 435, 21 So. 247, 60 Am. St. R. 516 (1897).

The legislature can regulate the constitutional jurisdiction of the board. Paxton v. Baum, 59 Miss. 531 (1882).

2. Roads, ferries, and bridges.

Although § 19-13-51 partially abrogates the sovereign immunity of the board of supervisors of any county in its capacity as "overseer" of the roads, ferries and bridges within its jurisdiction, a county board's qualified immunity remains intact for discretionary decisions of the board as a whole with regard to the general condition and state of maintenance of county roads and bridges. Webb v. County of Lincoln, 536 So. 2d 1356 (Miss. 1988).

Individual member of county board of supervisors is not liable for motorist's personal injuries and damages proximately caused by an accident resulting from allegedly negligent maintenance and repair of a county road. State ex rel. Brazeale v. Lewis, 498 So. 2d 321 (Miss. 1986).

In an action by a drainage district against a county to recover reimbursement for expenses incurred in the construction of bridges and culverts over two public roads in the county, the county was entitled to judgment where it never approved the construction undertaken by the district and where § 19-3-41 granted jurisdiction over roads, ferries and bridges to the county board of supervisors and §§ 51-29-95 and 51-31-95 left to the determination of the board what constituted suitable bridges across drainage districts and what bridges were necessary to be removed or constructed; neither statute authorized the work performed by the district or a suit for reimbursement. Leflore County v. Big Sand Drainage Dist., 383 So. 2d 501 (Miss. 1980).

The jurisdiction of the board of supervisors over roads has reference to public roads which have been established either by dedication, prescription, or under the method provided by the statute. Saxon v. Harvey, 190 So. 2d 901 (Miss. 1966).

The jurisdiction of the board of supervisors over roads, ferries, and bridges is restricted to their respective counties, except where authorized specifically by statute. Saxon v. Harvey, 190 So. 2d 901 (Miss. 1966).

Where the board of supervisors of Warren County acquired title to the Vicksburg Bridge by issuance of revenue bonds under special statutory authority conferred by Chapter 283, Laws of 1938 (Code 1942, §§ 8448-8469), and the board and bridge commissioners were operating the bridge and collecting tolls and other revenues pursuant to that act of Chapter 422, Laws of 1948 (Code 1942, § 8469.5), under a statutory scheme designed toward making the bridge self-liquidating so that the bridge might be operated free of tolls as early as possible, unless tolls were required thereafter for maintaining, repairing, and operating the bridge, and no part of the bridge was paid by the taxpayers of the county, the board and the commissioner were without authority to divert any portion of the revenues collected in the operation of the bridge to an "adequate return fund" for the use of county for general county purposes, in absence of statutory authority for the county to operate the bridge for profit. State ex rel. Patterson v. Board of Supvrs., 233 Miss. 240, 102 So. 2d 198 (1958), adhered to, 239 Miss. 671, 123 So. 2d 695 (1960), corrected, 239 Miss. 676, 125 So. 2d 91 (1960), but see Cook b. Board of Supvrs., 571 So. 2d 932 (Miss. 1990).

An appropriation of public funds for the construction or maintenance of private roads or driveways is to an object not authorized by law and a member of board of supervisors was personally liable for maintenance of private roads. Coleman v. Shipp, 223 Miss. 516, 78 So. 2d 778 (1955).

In proceeding for closing road where question whether road was private rather than public road was not raised or passed upon by county board of supervisors or circuit court issue could not be considered in supreme court. Byrd v. Board of Supvrs., 179 Miss. 889, 176 So. 910 (1937).

Statutes giving general jurisdiction to board of supervisors held not modified or repealed by any statutes on special road systems from 1920 to present time. Panola County v. Sardis, 171 Miss. 490, 157 So. 579 (1934); Panola County v. Crenshaw, 157 So. 584 (Miss. 1934); Panola

County v. Crowder, 157 So. 584 (Miss. 1934); Greenwood v. Leflore County, 157 So. 585 (Miss. 1934).

Board of supervisors held without power to contract for sale of bonds of highway district prior to and pending election authorizing issuance and sale of bonds. De Soto County v. Stranahan, Harris & Oatis, 159 Miss. 23, 131 So. 640 (1931).

Where board of supervisors discontinued public road, abutting owner had adequate remedy at law by suing for damages and chancery court was without power to supervise board of supervisors. Berry v. Board of Supvrs., 156 Miss. 629, 126 So. 405 (1930).

The board of supervisors may prevent unreasonable and unlawful use of their highways. Covington County v. Collins, 92 Miss. 330, 45 So. 854, 131 Am. St. R. 527, 15 Am. Ann. Cas. 1072 (1908).

Boards of supervisors cannot grant a telegraph company a right of way along the margin of a highway. It can confer no right outside the limit of the highway itself. Clay v. Postal Tel. Co., 70 Miss. 406, 11 So. 658 (1892).

3. Tax levies.

Board of supervisors held authorized under statute to levy taxes not only for general purposes but to have power to apportion taxes levied to various objects with which board is authorized to deal and to expend county money in carrying forward purposes authorized. Panola County v. Town of Sardis, 171 Miss. 490, 157 So. 579 (1934).

County board of supervisors held empowered to levy specific tax for specific purpose by order entered on their minutes to that effect where purpose is authorized by law. Panola County v. Town of Sardis, 171 Miss. 490, 157 So. 579 (1934).

Statutes held not to manifest legislative intention that levies by board of supervisors specially made for bridge purposes prior to 1928 statute should be divided between municipality and county. Panola County v. Town of Sardis, 171 Miss. 490, 157 So. 579 (1934).

4. Courthouses and jails.

A county board of supervisors has a duty under §§ 19-3-41 and 43 to provide adequate court facilities for each county. Encompassed therein is the duty to provide a courtroom free of such noise as substantially interrupts court proceedings. If the legislative branch fails to furnish the absolute essentials required for the operation of an independent and effective court, then no court affected thereby should fail to act. County boards of supervisors are subject to appropriate court orders requiring them to furnish adequate courtroom facilities when they adamantly fail or refuse to do so. Hosford v. State, 525 So. 2d 789 (Miss. 1988).

The board has the right to make an appropriation for setting shade trees in the grounds connected with the courthouse. Allgood v. Hill, 54 Miss. 666 (1877).

5. Police powers.

An ordinance of a board of supervisors of a county regulating the taking of fish therein which applies to all lakes and streams in the county is not special legislation. Ex parte Fritz, 86 Miss. 210, 38 So. 722, 109 Am. St. R. 700 (1905).

Statutes giving boards of supervisors the right to regulate the taking of fish in their counties are not invalid, as giving a judicial body legislative functions. Ex parte Fritz, 86 Miss. 210, 38 So. 722, 109 Am. St. R. 700 (1905).

A board of supervisors is without authority to adjudge a milldam to be a nuisance. Liles v. Cawthorn, 78 Miss. 559, 29 So. 834 (1901).

6. Miscellaneous.

Nothing in statute precluded county board of supervisors from assessing a collection fee on 25 percent of the delinquent tax; statute only precluded an assessment in excess of 25 percent. Harrison County Bd. of Supervisors v. Carlo Corp., — So. 2d —, 2002 Miss. LEXIS 123 (Miss. Apr. 4, 2002), opinion withdrawn by, substituted opinion at 833 So. 2d 582, 2002 Miss. LEXIS 266 (Miss. 2002).

County board of supervisors could contract with a private attorney to collect taxpayer's delinquent tax payment. Harrison County Bd. of Supervisors v. Carlo Corp., — So. 2d —, 2002 Miss. LEXIS 123 (Miss. Apr. 4, 2002), opinion withdrawn by, substituted opinion at 833 So. 2d 582, 2002 Miss. LEXIS 266 (Miss. 2002).

County held to have sufficient interest in suit to compel admission of Chinese children into white schools of county to warrant allowance made by county board to state's attorney-general for purpose of employing counsel to defend suit in behalf of county. Coahoma County v. Knox, 173 Miss. 789, 163 So. 451 (1935).

In case a judgment is rendered against the county the board of supervisors by mandamus may be compelled to pay the same. Town of Crenshaw v. Jackson, 122 Miss. 711, 84 So. 912 (1920).

The board of supervisors have no authority to divest themselves of the right to control litigation against the county. Lamar County v. Tally & Mayson, 116 Miss. 588, 77 So. 299 (1918).

A county cannot be sued unless the statute authorizes the same either expressly or by necessary implication. City of Grenada v. Grenada County, 115 Miss. 831, 76 So. 682 (1917).

The proceeds of an insurance company received from the destruction of county property must be invested in rebuilding such property. Adams v. Helms, 95 Miss. 211, 48 So. 290 (1909).

ATTORNEY GENERAL OPINIONS

Board of supervisors held authorized to pay judgment in favor of municipality for bridge tax collected by county, out of any money in the treasury to the credit of the general county fund, provided the payment of such judgment did not withdraw money in excess of the amount set apart in the county budget for general county purposes. Ops Atty Gen 1933-35, p 62.

Although boards of supervisors have full jurisdiction over roads, ferries, and bridges, they do not have authority to engage in a general program of flood control projects, except as authorized by statutes dealing specifically with flood control. Teel, May 20, 1992, A.G. Op. #92-0351.

Publication of newsletters for public information purposes is within discretionary authority of county board of supervisors; authorization for expenditure of public money for such purposes is matter to be determined by resolution and order of board. Haque, Nov. 12, 1992, A.G. Op. #92-0826.

County has authority to erect neighborhood watch signs in county; signs must remain property of county. Walters, Dec. 16, 1992, A.G. Op. #92-0927.

There is no statutory authority for county Board of Supervisors to make donation to private nonprofit corporation. Chaffin, July 2, 1992, A.G. Op. #92-0501.

County boards of supervisors, pursuant to Miss. Code Section 19-3-41, may enact reasonable zoning restrictions touching on bingo operations and/or may enact reasonable ordinances relating to bingo hours of operation; County sheriffs have no authority to enact ordinances or regulations regarding bingo, but rather are charged with duty and responsibility to enforce laws of state and lawful ordinances of county they serve. Scott, Jan. 20, 1993, A.G. Op. #93-0014.

Miss. Code Section 19-3-41 gives board of supervisors full jurisdiction over all "matters of county police." Meadows, Apr. 21, 1993, A.G. Op. #93-0226.

Miss. Code Section 19-3-41 delegates to counties authority over all matters of county police which encompasses authority to regulate running at large of animals; therefore, city may, in exercise of its discretion, entertain interlocal agreement with county wherein county provides animal control assistance to city. Edens, Apr. 28, 1993, A.G. Op. 0264.

Section 19-3-41 empowers county board of supervisors to contract with private collection agency or attorney to collect outstanding fines and Section 99-19-20 does not forbid use of collection agency or attorney to collect delinquent fines. Smith, March 18, 1994. A.G. Op. #93-0863.

A county may enter into a finder's agreement to recover lost funds or checks so long as the agreement meets the provisions of Section 19-3-41(2) and any additional rules and regulations established by the Mississippi Department of Audit. Leggett, December 8, 1995, A.G. Op. #95-0783.

A county board of supervisors does not have the power to lease real property from a school district for the purpose of subsequently subleasing the property to citizens of the county to be used as a community recreational facility. Lamar, July 18, 1997, A.G. Op. #97-0429.

A board of supervisors may neither invest in a corporation nor obligate the full faith and credit of the county as guarantor of a loan to such corporation. McWilliams, January 9, 1998, A.G. Op. #97-0799.

The collection fee authorized by subsection (2) may be imposed on any delinquent payment outstanding as of July 1, 1998 or any payment which becomes delinquent subsequent to July 1, 1998 regardless of when the original fine was imposed. Evans, October 9, 1998, A.G. Op. #98-0600.

By virtue of the "home rule" powers granted by Miss. Code Section 19-3-40 and by virtue of the powers over roads granted by this section, a board of supervisors may defray the cost of relocation of a sewer line owned by a utility district which is presently located upon county road right of way. Hollimon, December 18, 1998, A.G. Op. #98-0745.

A board of supervisors may, pursuant to its police power and jurisdiction over roads and bridges, remove unsaleable vehicles constituting a safety hazard located on the public right-of-way. Sherard, April 9, 1999, A.G. Op. #99-0174.

A county board of supervisors has the authority to contract with a collection agency for the collection of delinquent fines from justice court and may set policy to collect an amount up to 25% of the delinquent fines collected in state and up to 50% of the delinquent fines collected outside the state, which amount is in addition to the delinquent fine owed; the percentage is set by the board of supervisors and not the judge, and is not part of the fine or the judgment. Erby, May 28, 1999, A.G. Op. #99-0247.

The statute does not necessarily require that the statutory 25 percent be collected from the delinquent taxpayer before an attorney can be paid. Meadows, March 31, 2000, A.G. Op. #2000-0137.

A collection agency could collect a delinquent payment owed to a county, which amount included any interest or penalty that might have accrued and was owed to the county, and, in addition, could collect up to 25% of the total amount owed, as set out in the statute. Barry, April 28, 2000, A.G. Op. #2000-0174.

If the federal program creating a Mid-Delta Empowerment Zone Alliance grant so allows, the county is not required to recoup the proceeds of the grant. Perkins, July 28, 2000, A.G. Op. #2000-0386.

A county cannot contract to receive less than the full amount of the delinquent amounts due to it that are collected by a private collection agency. Sumners, Nov. 10, 2000, A.G. Op. #2000-0648.

The additional amount collected under the statute is mandatory and is required of the individual owing the debt; however, the imposed amount is an additional amount owed by the individual and does not reflect a mandatory percentage of a contingency fee, which is left to the discretion of the board of supervisors in negotiating its contract for collection services. Sumners, Nov. 10, 2000, A.G. Op. #2000-0648.

A county board of supervisors may charge actual damages for use of county rights of way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of-way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

A justice court may add the collection fee authorized under subsection (4) to the delinquent fine of a defendant even if the defendant is later arrested on an unrelated charge. Thompson, Apr. 27, 2001, A.G. Op. #01-0255.

The statute grants to county boards the authority over all matters of county police, which necessarily encompasses the authority to regulate the running of animals at large. Prichard, Sept. 14, 2001, A.G. Op. #01-0585.

There is no specific authority for a board of supervisors to donate office space for use by a congressman or other non-county governmental agency. Griffin, Aug. 30, 2002, A.G. Op. #02-0470.

There is no authority for a board of supervisors to donate office space for use by a congressman or other non-county governmental agency based on a board finding that the donation will go to an entity that will directly benefit the county or the community. Griffin, Aug. 30, 2002, A.G. Op. #02-0470.

Because fire protection is a governmental function or "county affair" and is also a "matter of county police" subject to regulation under Section 19-3-41 it is suggested that a county may enter an order acknowledging established service areas and the recognized volunteer organizations which provide fire protection within those areas; further, the county may regulate who and when persons can attach to a public water system, and may establish rules regarding which file protection providers have superior control over a fire scene. Morrow, Nov. 8, 2002, A.G. Op. #02-0570.

Subsection (3) of this section does not authorize the board of supervisors to add 25% to delinquent criminal fines; the subsection merely limits the amount to be paid to the constable at no more than 25% of the amount collected by the constable. Ross, Sept. 5, 2002, A.G. Op. #02-0524.

In a case where the coroner has determined that an autopsy is not necessary and the next of kin cannot be reached, the board of supervisors has the duty to make arrangements for the transportation and preservation of the body until family members may make arrangements, and any expenses incurred by the county would ultimately be the responsibility of decedent's estate or that person liable at law for the necessities of the decedent during his or her lifetime. Williams, Jan. 24, 2003, A.G. Op. #02-0727.

A court may assign delinquent restitution payments to a collection agency for the benefit of the victim along with the delinquent fines and court costs owed to the county (although the fee may not be added to the restitution). Thompson, Jan. 31, 2003, A.G. Op. #03-0032.

A board of supervisors may not appropriate funds to hire attorneys to represent private citizens in the matter of closing private railroad crossings. Shepard, Oct. 3, 2003, A.G. Op. 03-0459.

A county may enter into a contingency contract for the discovery and return of overcharges paid by the county for telephone services. However, based on constitutional considerations, a county may not contract to receive less than the full amount due. Trapp, Nov. 11, 2003, A.G. Op. 03-0533.

For a county board of supervisors too enter into a partnership agreement with a private, nonprofit corporation in a program to enter into a partnership agreement for the purpose of applying for a Child Care and Development Block Grant, the board must first make two factual determinations: (1) that the grant is authorized by federal law, rule, or regulation; and, (2) that the program permits provision of services by contracting with a private, nonprofit corporation. Entrekin, Jan. 23, 2004, A.G. Op. 03-0436.

There is no statutory authority for a district attorney to charge a collection fee for the collection of delinquent criminal fines. However, subsection (2) of this section allows the county to contract with a private attorney or private collection agency to collect delinquent payments owed to the county. Bates, Mar. 26, 2004, A.G. Op. 04-0128.

If a county board of supervisors makes a factual determination, evidenced by an order entered upon the minutes, that a culvert is needed on a county road or right-of-way to preserve and maintain the road or right-of-way, then it may authorize installation of the culvert. If the board determines that installation of the culvert is only to provide adequate access to county roads for private landowners, then it may not authorize the work. Dulaney, Apr. 16, 2004, A.G. Op. 04-0151.

A county is authorized under statutes governing general jurisdiction over roads to acquire right-of-way for and construct sidewalks along county roads as part of the county road system utilizing road and bridge funds if the board of supervisors determines, as reflected by an order entered upon its minutes, that such is necessary and convenient for the use of the traveling public. Hollimon, June 4, 2004, A.G. Op. 03-0616.

A county may not prohibit the traffic on the private road from utilizing the public road. But, the county may exercise reasonable regulation and control through the use of design standards, safety regulations, and current traffic laws when determining how the private road joins the end of the county road. Kilpatrick, July 16, 2004, A.G. Op. 04-0306.

Section 99-37-7(1) and subsection (4) of this section may be used to collect delinquent payments which consist of constable fees. Busby, July 23, 2004, A.G. Op. 04-0316.

Pursuant to § 19-3-40 and this section, a county not designated in § 19-5-51 and may contract for animal services and thereby operate an animal shelter for use by county residents for the temporary and/or permanent shelter of animals of all kinds. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

Pursuant to this section and § 19-3-41, Lafayette County has the authority to provide various services at a county-owned or supported animal shelter such as a "drop off" and/or "pick up" service for unwanted or abandoned animals. the county may but is not required to provide these services. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

This section allows a county to comply with the terms of a federal grant program and therefore would allow a lien or mortgage to be placed on property acquired with such federal funds. Carnathan, Oct. 29, 2004, A.G. Op. 04-0548.

A county may adopt and enforce regulations permitting the construction of certain private structures within county road right-of-ways. However, the county is not authorized to assist in the construction of such structures as this activity would amount to unauthorized expenditure of public funds. Nowak, Feb. 14, 2005, A.G. Op. 05-0036.

If a county desires to expand a road, the owner of a structure placed in the road with the county's permission would be required to remove it at his own cost. Nowak, Feb. 14, 2005, A.G. Op. 05-0036.

Section 19-3-41 authorizes a county to enter in a loan agreement with the Tennessee Valley Authority to purchase real property, and pursuant to Section 19-3-40 the county may purchase federal property at auction for an amount supported by appraisal and duly authorized by the board of supervisors. Phillips, Mar. 23, 2005, A.G. Op. 05-0137.

Section 67-7-7 authorizes a county to recover its costs for dismantling and removing a damaged and abandoned manufactured home from a public roadway by filing suit against the owner in justice court. White, Nov. 14, 2005, A.G. Op. 05-0542.

A county board of supervisors may implement and erect road signs pursuant to a countywide Adopt-A-Roadway program displaying the names of the "adopting" entities. White, Feb. 17, 2006, A.G. Op. 06-0025.

Where a contingency contract for telephone overcharges is structured so that the entire amount recovered by the telephone audit firm for telephone overcharges is remitted to the county, and the contingency fee based on the amount collected is then paid by the county to the firm, it would comply with the provisions of Section 19-3-41(2). Trapp, June 30, 2006, A.G. Op. 06-0254.

Installation of GPS or other electronic tracking devices on county vehicles for emergency management purposes does not violate privacy rights under state law. Disclosure of the presence of such devices to the drivers and occupants of county vehicles is a matter of county policy. Drane, March 16, 2007, A.G. Op. #07-00105, 2007 Miss. AG LEXIS 74.

RESEARCH REFERENCES

ALR. Power of county or its officials as to compromise of claims. 15 A.L.R.2d 1359.

Power of county supervisors to remit, release or compromise taxes. 28 A.L.R.2d 1428.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 161, 163, 164 et seq.

CJS. 20 C.J.S., Counties § 115.

§ 19-3-42. Maintenance of private roads and driveways used for school bus turnarounds; public school grounds; driveways and parking lots of nonprofit organizations.

(1) The board of supervisors of any county is hereby authorized and empowered, in its discretion, to grade, gravel or shell, repair, and/or maintain private gravel or shell roads or driveways to private residences if such roads or driveways are used for school bus turnarounds.

(2) Prior to engaging in the work authorized in subsection (1) of this section, the board of supervisors shall spread upon the official minutes of the board:

(a) The written request of the school board for such work;

(b) The written approval of the board of supervisors for such work;

(c) The specific location of the road or driveway to be worked; and

(d) The name of the owner of the road or driveway to be worked.

(3) The written request of the school board, as required in subsection (2)(a) above, shall contain a current list of all active school bus turnarounds presently in use by the school district or contemplated for use by the school district for the present school year. The approval by the board of supervisors shall be valid and effective for the period of time that a turnaround is anticipated for use, but in no event for a period greater than one (1) year.

(4) In addition to the authority granted in subsection (1) of this section, from and after October 1, 1989, the board of supervisors of any county is further authorized, in its discretion, to maintain public school grounds of the county and to grade, gravel, shell or overlay, and/or to maintain gravel, shell, asphalt or concrete roads, driveways or parking lots of public schools of the county if, before engaging in such work, the board of supervisors shall spread upon its official minutes the written request of the school board for such work, the written approval of the board of supervisors for such work and the specific location of the school grounds or road, driveway or parking lot, to be worked.

(5) In addition to any other authority granted in this section, the board of supervisors of any county is hereby authorized, in its discretion, to repair and maintain driveways and parking lots of: (a) any nonprofit organization in the county which is tax exempt under Section 501(c) of the United States Internal Revenue Code and which has as one (1) of its primary purposes for organization to aid and assist in the rehabilitation of persons suffering from drug abuse or drug addiction; and (b) any private, nonprofit cemeteries in the county. The board of supervisors of any county shall not be authorized under the provisions of this subsection to repair or maintain driveways or parking lots located more than one hundred fifty (150) feet from the center of any highway, road or street under the jurisdiction of the county.

SOURCES: Laws, 1988, ch. 493, § 1; Laws, 1989, ch. 422, § 1; Laws, 1989, ch. 541, § 1; Laws, 1990, ch. 368, § 1, eff from and after October 1, 1990.

Cross References — Maintenance of roads, driveways, parking lots and grounds of public schools by governing authorities of municipalities, see § 21-37-4.

Federal Aspects — Tax exempt nonprofits organizations which have as a primary purpose to aid and assist in rehabilitation of drug abusers or drug addicts, see 26 USCS § 501(c).

JUDICIAL DECISIONS

1. Public benefit.

Where there was only one residence on a road, there was no public benefit from its use; therefore, the road was properly determined to be a private road. George County ex rel. Board of Supvrs. v. Davis, 721 So. 2d 1101 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

Section 19-3-42 does not apply to turnarounds used by Headstart buses and that there is no authority for the board of supervisors to maintain private roads and driveways for the purpose of assisting Headstart buses. Crow, December 13, 1995, A.G. Op. #95-0825.

The School bus turnaround statute authorizes a political entity to use taxpayer money to grade, gravel, repair or maintain private property for a public purpose. Section 19-3-42 expressly provides that the school board must make a written request to the board of supervisors for such work. There is no statutory authority for the school board to delegate this responsibility to an individual employee. Houston, March 1, 1996, A.G. Op. #96-0061.

The County Board of Supervisors, under Section 19-3-42, may furnish dirt to an athletic field for the purpose of maintaining and preparing same for the season. Gex, March 15, 1996, A.G. Op. #96-0098.

Section 19-3-42 does not allow a county to lay out and construct a private road or driveway. However, if the parcel in question is donated to the county for use as part of a public road and the board finds on its minutes that the acceptance of such donation is in the public interest and for the public use, then the county may construct and maintain such section as a public road. Gex, August 16, 1996, A.G. Op. #96-0547.

Under Section 19-3-42 the maintenance of public school grounds does not include the erection of equipment such as basketball goals and playground equipment. Bradley, November 1, 1996, A.G. Op. #96-0739.

The board of supervisors may grade and maintain public school grounds as long as the requirements of this statute are met. Carroll, Dec. 5, 1997, A.G. Op. #97-0731.

Counties cannot contribute funds or materials for construction of a concession stand and press box at a public school athletic facility. Pierce, March 6, 1998, A.G. Op. #98-0071.

A supervisor in a beat county may repair and/or maintain a road or driveway used for a school bus turnaround when such turnaround has been approved in accordance with the requirements of the statute; however there is no authority for a board of supervisors or one district to construct and/or maintain a parking area for school buses at the end of its route or at the drivers' homes. Johnson, April 24, 1998, A.G. Op. #98-0227.

A county may maintain (grading, graveling, shelling, repairing, and/or otherwise maintaining) private gravel or shell roads or driveways to private residences properly established as school bus turnarounds. Smith, September 4, 1998, A.G. Op. #98-0490.

This section does not authorize a county to build or construct a private road or driveway to be used as a school bus turnaround or to construct a parking area for a school bus at its driver's home; however, if the statutory procedures are followed, a school bus driver's private gravel or shell driveway may be designated as a school bus turnaround and may be maintained by the county. Walters, January 8, 1999, A.G. Op. #98-0770.

This section does not authorize a county to build or construct a private road or driveway to be used as a school bus turnaround or to construct a parking area for a school bus at its driver's home; however, if the statutory procedures are followed, a school bus driver's private gravel or shell driveway may be designated as a school bus turnaround and may be maintained by the county. Smith, January 8, 1999, A.G. Op. #98-0772.

There is no authority that would allow a county to reimburse a school board for an expenditure the school board made prior to any contract or interlocal agreement becoming effective, and without prior authorization by the county. Gex, February 12, 1999, A.G. Op. #98-0797.

The board of supervisors of any county may establish policies that set forth the timing for receiving requests from the school board for work on bus turnarounds; the establishment and adoption of these policies must appear in the minutes of the meeting; alternatively, a county board of supervisors may simply continue to handle such requests as they come before the board on an as-needed basis. Davies, Nov. 19, 1999, A.G. Op. #99-0631.

A county road department may not furnish and install culvert pipes or otherwise build an entrance ramp to afford adjoining property owners access to state highways. Bishop, Dec. 10, 1999, A.G. Op. #99-0659.

The demolition of a structure and the hauling off of debris from such a structure does not meet the meaning of maintaining public school grounds or maintaining school driveways found in the statute; demolition and hauling off demolition debris go hand in hand, and such actions are in the nature of work upon buildings, not grounds. Lamar, Jr., Mar. 30, 2001, A.G. Op. #01-0130.

A county board of supervisors lacks statutory authority to make appropriate repairs and/or to maintain private gravel or shell roads or driveways to private residences for private school bus turnarounds; however, a lawfully established and maintained public school bus turnaround could also be utilized by a private school bus upon consent of the private landowner. Fillingane, Sept. 21, 2001, A.G. Op. #01-0589.

A county board of supervisors lacks authority to provide the use of its equipment and county employees to take down the building on city property and transport it to district school grounds. Smith, Feb. 22, 2002, A.G. Op. #02-0063.

A county board of supervisors lacks statutory authority to maintain and repair buses utilized to transport handicapped persons that are owned by a profit or a nonprofit corporation. Chamberlin, Feb. 20, 2002, A.G. Op. #02-0064.

A county board of supervisors is without authority to contract with a construction company for the building of track lanes at the local high school. Chamberlin, Feb. 26, 2002, A.G. Op. #02-0071.

There is no authority for a board of supervisors to perform work on a private driveway for access of a head start bus or a community service disability bus. Lee, Jr., May 10, 2002, A.G. Op. #02-0247.

A board of supervisors may repair and maintain driveways and parking lots on private nonprofit cemeteries upon satisfying the requirements of subsection (5). Barefield, July 19, 2002, A.G. Op. #02-0354.

The statute provides authority to repair and maintain, but does not provide authority to lay out and construct new driveways and parking lots to private nonprofit cemeteries. Barefield, July 19, 2002, A.G. Op. #02-0354.

A board of supervisors has the discretionary authority to grade, gravel or shell and/or to repair and maintain roads or driveways to public cemeteries. Barefield, July 19, 2002, A.G. Op. #02-0354.

There is no authority for a board of supervisors to lay out, construct and/or pave new roads or driveways to public cemeteries. Barefield, July 19, 2002, A.G. Op. #02-0354.

If the board of supervisors determines that crushed limestone constitutes gravel within the meaning of § 19-3-42, then it may be utilized on school bus turnarounds. Dulaney, Sept. 6, 2002, A.G. Op. #02-0489.

The board of supervisors may repair and maintain roads for school bus turnarounds more than 150 feet from the center line of a public highway, road or street in their jurisdiction. Dulaney, Sept. 6, 2002, A.G. Op. #02-0489.

Subsection (4) of this section provides authority for county personnel to assist a school district in the preparation and maintenance of football fields provided the board of supervisors shall first spread upon its minutes the written request of the school board for such work and the approval by the board of such work including specific location of the grounds. Dulaney, Sept. 13, 2002, A.G. Op. #02-0529.

If the board of supervisors exercises its discretion and determines that a school bus turn-around located on private property is one it wishes to maintain, then the board of supervisors or the landowner is responsible for the purchase of any gravel needed for repair of the turn-around. Jacobs, Dec. 20, 2002, A.G. Op. #02-0690.

A school district has authority to pay for materials needed to create or make repairs to school bus turn-arounds located on private property. Jacobs, Dec. 20, 2002, A.G. Op. #02-0690.

A county has no authority to use county-owned equipment and materials to place gravel on a private drive leading to a local, private water association tank. Chamberlin, Jan. 10, 2003, A.G. Op. #02-0723.

If a "private foundation," as defined by 26 U.S.C.S. Section 509 as being an organization described in Section 501(c)(3), has applied for and has been granted 501(a) tax exempt status, the Board of Supervisors would be empowered to exercise the authority contained in Section 19-3-42(5) to repair and maintain the parking lot or driveway of a qualified foundation; however, regardless of whether the "private foundation" meets all the qualifications of a 501(c)(3) tax exempt organization, if it has not applied for and received a tax exempt designation from the Secretary of the Treasury, it does not fit within the language of Section 19-3-42(5), and the Board would have no authority to repair or maintain the driveways or parking lots. Yancey, May 16, 2003, A.G. Op. 03-0210.

Where a school bus is actually being used for a public school and its students instead of a private entity, the maintenance of bus turn-arounds would not exceed the authority of the board of supervisors. Clayton, Jan. 28, 2005, A.G. Op. 05-0005.

Section 19-3-42 does not authorize a county to build or construct a private road or driveway to be used as a school bus turnaround, only to maintain one. However, if the statutory procedures are followed, a school bus driver's private gravel or shell driveway may be designated as a school bus turnaround and may be maintained by the county. Watson, Mar. 17, 2006, A.G. Op. 06-0070.

A county may repair or maintain those portions of an eligible cemetery's parking lots, driveways, and interior roads, and culverts which drain same, which are within 150 feet from the center of the highway, road or street that is under the jurisdiction of the county. Williams, May 12, 2006, A.G. Op. 06-0153.

No provision in state law permits public funds to be expended to improve a privately owned driveway where the United States Postal Service requests such improvements to improve access by mail carriers. White, July 25, 2006, A.G. Op. 06-0304.

§ 19-3-43. Board to provide and designate building for its meetings and sessions of court when courthouse unavailable.

When there shall not be a courthouse in any county, or the same may be undergoing repairs, or unfit for use, the board of supervisors may meet at a convenient place in the county and shall provide and designate some suitable building in which the courts of the county and the meetings of the board of supervisors may be held, the expense of which, and for fitting the same for the purpose, shall be paid out of the county treasury. If the board shall fail to make such provision, the sheriff of the county may do so.

SOURCES: Codes, 1857, ch. 59, art 23; 1871, § 1370; 1880, § 2151; 1892, § 306; 1906, § 325; Hemingway's 1917, § 3698; 1930, § 220; 1942, § 2895.

Cross References — Removal of local governments in emergencies, see §§ 17-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

A county board of supervisors has a duty under §§ 19-3-41 and 43 to provide adequate court facilities for each county. Encompassed therein is the duty to provide a courtroom free of such noise as substantially interrupts court proceedings. If the legislative branch fails to furnish the absolute essentials required for the operation of an independent and effective court, then no court affected thereby should fail to act. County boards of supervisors are subject to appropriate court orders requiring them to furnish adequate courtroom facilities when they adamantly fail or refuse to do so. Hosford v. State, 525 So. 2d 789 (Miss. 1988).

Where old courthouse burned and sheriff and board of supervisors designated another building as temporary courthouse, tax sale could be validly held only at the door of the temporary courthouse, and tax sale held in front of concrete steps at ruins of old courthouse, which was not visible from the temporary courthouse, was void. Collins v. Wright, 197 Miss. 695, 20 So. 2d 837 (1945).

Decision that place of holding court had been lawfully designated was final and could not be collaterally attacked by motion to quash indictment because not returned at place legally designated for holding court. Jones v. State, 168 Miss. 702, 152 So. 479 (1934).

A grand jury holding its deliberations in the place lawfully provided for holding of court during construction of a new courthouse is in session "at" the courthouse. Whitaker v. State, 141 Miss. 788, 106 So. 96 (1925).

Where a judge decides that the place provided for him has been lawfully designated as the place for holding his court, his decision to that effect is final and is not open to collateral attack. Brookhaven Lumber & Mfg. Co. v. Adams, 132 Miss. 689, 97 So. 484 (1923).

As to "office" of clerk of the board of supervisors. Johnson v. Board of Supvrs., 113 Miss. 435, 74 So. 321 (1917).

The courthouse having been destroyed, a tax sale made at a building in the county seat, under an order of the board of supervisors of the same date, designating it as the courthouse and the place where tax sales should be made is not void. Thayer v. Hartman, 78 Miss. 590, 29 So. 396 (1901).

A verbal authority by the board to the sheriff to rent offices for the use of the county is invalid. If the sheriff rent them and the county use them, the county will, however, be liable for a reasonable rent. Crump v. Board of Supvrs., 52 Miss. 107 (1876).

ATTORNEY GENERAL OPINIONS

If board of supervisors fails to provide suitable substitute building in which to hold court when county courthouse is unsuitable, then sheriff may do so. Ford, Jan. 12, 1994, A.G. Op. #93-0959.

§ 19-3-44. Alternate court facilities in counties containing two judicial districts.

(1) The board of supervisors of any county in which there are two (2) judicial districts may provide alternate facilities for the courts of one judicial district when the courthouse of such district is in a condition of disrepair due to damage or construction. Such alternate facilities may be located in the other judicial district of the county and may be located in the courthouse of such other judicial district, but nothing contained herein shall be construed to require such facilities to be located in said courthouse if, in the discretion of the board of supervisors, some other location is preferred.

(2) The several courts of any county wherein there are two (2) judicial districts may by order duly entered on the minutes of the court remove the court to the alternate facility provided by the board of supervisors located in the other judicial district when such transfer is required as provided herein and in such event no cause of action shall be defeated, delayed or otherwise impeded based upon a challenge to the jurisdiction of the court or a question of venue which results from such transfer.

(3) The provisions of this section shall be applicable only for such period as the court is prevented from sitting in the proper judicial district due to physical condition of the proper courthouse.

SOURCES: Laws, 1974, ch. 332, §§ 1-3, eff from and after passage (approved March 11, 1974).

RESEARCH REFERENCES

ALR. Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Am Jur. 20 Am. Jur. 2d, Courts §§ 18-20.

CJS. 20 C.J.S., Counties § 76.

21 C.J.S., Courts §§ 196, 224, 233-236.

§ 19-3-45. Repealed.

Repealed by Laws of 1988 Ex Sess, ch. 14, § 61, eff from and after January 2, 1989.

[Codes, 1942, § 2957; Laws, 1938, ch. 300; Laws, 1946, ch. 479]

Editor's Note — Former § 19-3-45 related to the preparation and filing of inventories of county personal property. For provisions concerning county inventory control, see § 31-7-107.

§ 19-3-47. Employment of counsel.

(1)(a) The board of supervisors shall have the power, in its discretion, to employ counsel by the year at an annual salary at an amount that it deems proper, not to exceed the maximum annual amount authorized by law for payment to a member of the board.

(b) The board of supervisors shall have the power, in its discretion, to employ counsel in all civil cases in which the county is interested, including eminent domain proceedings, the examination and certification of title to property the county is acquiring and in criminal cases against a county officer for malfeasance or dereliction of duty in office, when by the criminal conduct of the officer the county may be liable to be affected pecuniarily, with the counsel to conduct the proceeding instead of the district attorney, or in conjunction with him, and to pay the counsel out of the county treasury or the road fund that may be involved reasonable compensation, or if counsel so employed is retained on an annual basis as provided in this subsection, reasonable additional compensation for his services.

(c) The board of supervisors shall have the power, in its discretion, to pay reasonable compensation to attorneys who may be employed by it in the matter of the issuance of bonds and the drafting of orders and resolutions in connection therewith. In no instance shall the attorney's fee for the services exceed the following amounts, to wit:

One percent (1%) of the first Five Hundred Thousand Dollars ($500,000.00) of any one (1) bond issue; one-half percent (½%) of the amount of the issue in excess of Five Hundred Thousand Dollars ($500,000.00) but not more than One Million Dollars ($1,000,000.00); and one-fourth percent (¼%) of the amount of the issue in excess of One Million Dollars ($1,000,000.00). The limitations imposed in this paragraph shall not apply to any bond issue for which a declaration to issue the bonds has heretofore been adopted by proper resolution.

(d) This subsection shall not in anyway amend or repeal or otherwise affect subsection (2) of this section, but this subsection shall remain in full force and effect.

(2) The board of supervisors of any county, in addition to the authority conferred upon it in subsection (1) of this section, may employ, in its discretion, a firm of attorneys to represent it as its regular attorneys on the same terms, conditions and compensation as provided for employment of an attorney as its regular attorney. However, there shall not be both an attorney and a firm of attorneys employed at the same time as the regular attorney for the board.

(3) In any county having a 1980 federal census population in excess of one hundred eighteen thousand (118,000), and in which is located a major refinery for the production of petroleum products and a facility for the construction of ships for the United States Navy; in any county which is traversed by an interstate highway and having a 1980 federal census population in excess of sixty-six thousand (66,000), and in which is located a comprehensive university operated by the Board of Trustees of State Institutions of Higher Learning and a National Guard training base; in any county in which is located the State Capitol and the state's largest municipality; in any county which is traversed by Interstate Highway 55, United States Highway 51 and United States Highway 98; in any county bordering the Gulf of Mexico, having a 1980 federal census population in excess of one hundred fifty-seven thousand (157,000), and in which is located a state-owned port; and in any county which is traversed by

Interstate Highway 20, United States Highway 49 and United States Highway 80, and in which is located the State Hospital and an international airport; all of which foregoing criteria the Legislature finds to be conducive to industrial development requiring the issuance of industrial revenue bonds and which counties would gain benefits by employment of counsel in the manner authorized by this subsection, the board of supervisors, as an alternative to the authority conferred upon it in subsections (1) and (2) of this section, may employ annually, in its discretion, an attorney as a full-time employee of the county, subject to the following conditions:

(a) The attorney shall maintain an office in the county courthouse or other county-owned building and shall represent the board of supervisors and all county agencies responsible to the board;

(b) The attorney shall be employed by the board of supervisors in the matter of the issuance of all bonds of the county and the drafting of resolutions in connection therewith, and shall represent the board in all state and federal courts. Attorney's fees for the services which otherwise would have been paid to an attorney under paragraph (1)(c) of this section shall be paid into the county general fund and used to defray the salary of the attorney and his necessary office expenses;

(c) During his employment by the county, the attorney shall not engage otherwise in the practice of civil or criminal law and shall not be associated with any other attorney or firm of attorneys;

(d) The board of supervisors shall have the power, in its discretion, to pay the attorney an annual salary not to exceed the maximum annual salary authorized by law to be paid to the county judge of that county; and

(e) The board of supervisors may authorize, in its discretion, the employment of special counsel to assist the counsel employed pursuant to this subsection, provided that the board shall determine and spread on its minutes that the employment of the special counsel is necessary and in the best interest of the county and setting forth the duties or responsibilities assigned to the special counsel.

SOURCES: Codes, 1857, ch. 59, art 35; 1871, § 1385; 1880, § 2176; 1892, § 293; 1906, § 312; Hemingway's 1917, § 3685; 1930, § 272; 1942, §§ 2958, 3374-95.5; Laws, 1924, ch. 212; Laws, 1936, ch. 308; Laws, 1942, ch. 218; Laws, 1946, chs. 182, 424; Laws, 1948, ch. 263; Laws, 1952, ch. 222; Laws, 1956, ch. 189; Laws, 1958, ch. 220; Laws, 1960, chs. 190, 191; Laws, 1962, chs. 248, 249; Laws, 1964, ch. 275, § 1; Laws, 1962, 2d Ex Sess ch. 25, § 1; Laws, 1966, ch. 296, § 1; Laws, 1968, ch. 285, §§ 1, 2; Laws, 1971, ch. 429, § 1; Laws, 1972, ch. 393, § 1; Laws, 1973, ch. 336, § 1; Laws, 1984, ch. 491; Laws, 1989, ch. 424, § 1; Laws, 1990, ch. 508, § 1; Laws, 1995, ch. 341, § 1, eff from and after passage (approved March 14, 1995).

Cross References — Employment of county prosecuting attorney as attorney for board of supervisors, see § 19-23-15.

Appointment and compensation of municipal attorney generally, see § 21-15-25.

Other sections derived from same 1942 code sections, see §§ 21-15-25, 21-15-27.

JUDICIAL DECISIONS

1. In general.
2. Illustrative cases.

1. In general.

Members of a county board of supervisors are empowered to employ counsel and defend themselves when sued in causes arising out of their official position where they have a colorable defense and present the defense in good faith; however, where there is no reasonable basis for a defense and/or where the board members proceed in bad faith, they act ultra vires and have no power to expend public funds for defense, and, in such cases, the court should order that any such defense be at their own expense and that any public funds expended be reimbursed. Richardson v. Canton Farm Equip., Inc., 608 So. 2d 1240 (Miss. 1992).

A county had standing under § 21-1-31 to object to the annexation of county territory by a city since it was a party interested in, affected by or aggrieved by the annexations. Furthermore, a combined reading of §§ 11-45-17, 11-45-19, and 19-3-47(1)(b) vested in the county, acting by and through its board of supervisors, authority to exercise its standing and to employ counsel and participate fully in each annexation and confirmation proceeding. Harrison County v. City of Gulfport, 557 So. 2d 780, 17 A.L.R.5th 974 (Miss. 1990).

Where a board of supervisors in issuing refunding bonds as provided by law, engaged in connection therewith the services of an attorney, who on declining to proceed further without increased compensation received a settlement for his work done and expenses incurred, and new attorneys were engaged to complete the work, and the board of supervisors made appropriations for the payment of such attorney's fees under their authority to appropriate money for the payment of the expenses incurred in issuing the bonds, no liability accrued against the board of supervisors, notwithstanding that such appropriation for attorney's fees may have exceeded the amount authorized or that they were in violation of constitutional provisions prohibiting extra compensation to public officers, agents, servants or contractors after service rendered or contract made or part payment of any claim under a contract not authorized by law, and against relief of any obligation or liability owing to any county, etc. Causey v. Gilbert, 193 Miss. 756, 10 So. 2d 451 (1942).

Board of supervisors is not authorized to pay traveling expenses of its attorney in performance of his duties except those while representing board before state tax collector. Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934).

Bill against board of supervisors and its attorney, alleging illegal payment of attorney's traveling expenses, held not subject to general demurrer. Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934).

An admission of counsel for a defendant county in a suit for damages for abandoning a highway is binding on the county. Noxubee County v. Long, 141 Miss. 72, 106 So. 83 (1925).

Where the revenue agent brought a suit in behalf of the county against a depository the court had the discretion to permit an attorney for the board of supervisors to co-operate with the revenue agent in the suit. Robertson v. Bank of Batesville, 116 Miss. 501, 77 So. 318 (1918).

The board of supervisors, under Code 1892, § 293 may employ advisory counsel by the year at an annual salary, and during the employment of such counsel, may employ other counsel in civil cases in which the county is interested and in criminal cases mentioned in the code section. Board of Supvrs. v. Booth, 81 Miss. 267, 32 So. 1000 (1902).

The employment by the board of supervisors of counsel by the year as authorized by this section [Code 1942, § 2958], does not deprive it of power to employ a competent person, although he be a lawyer, other than the one previously employed, to investigate the titles to the sixteenth section school lands and to bring suits to confirm titles thereto. Warren County v. Dabney, 81 Miss. 273, 32 So. 908 (1902).

The statute does not authorize the board to pay an attorney for procuring to be done what is its duty to have done, such as requiring officers to give new bonds in certain cases. Marion County v. Taylor, 55 Miss. 184 (1877).

2. Illustrative cases.

Sheriff was not entitled to reimbursement for legal fees incurred by him as a party in a federal court lawsuit by employees seeking overtime pay because the statutes allowing the payment of fees were discretionary and did not require that counsel be provided to all employees with a colorable defense who acted in good faith. Madison County v. Hopkins, 857 So. 2d 43 (Miss. 2003).

Chancellor erred in ordering a county to pay part of the attorney's fees a sheriff incurred in federal court litigation, on grounds that a conflict of interest entitled the sheriff to separate representation, as (1) the federal district court had ruled that there was no conflict of interest in the same attorney's representing the sheriff in his official capacity and suing him in his individual capacity; and (2) Miss. Code Ann. § 25-1-47 and Miss. Code Ann. § 19-3-47 permitted, but did not require, the county to provide the sheriff legal counsel in the federal action. Madison County v. Hopkins, 857 So. 2d 43 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

A contract which attempts to "irrevocably" employ private persons "to make the necessary investigations to ascertain the correct amount of the taxes and moneys which may be due and owing to the county of Issaquena and various taxing districts by the State of Mississippi and to collect said moneys," etc., and to pay a sum equal to twenty per cent of all amounts found to be due and collected, held absolutely null and void. Ops Atty Gen, 1933-35, p 44.

The board of supervisors is not authorized to employ counsel for the purposes mentioned in said contract. Ops Atty Gen, 1933-35, p 44.

The board of supervisors is not authorized to employ an auditor to make the investigations mentioned in said contract. Ops Atty Gen, 1933-35, p 44.

Each member of the board of supervisors who votes to allow the claim on account thereof would be liable on his official bond for the amount so paid. Ops Atty Gen, 1933-35, p 44.

The board of supervisors may pay out not exceeding one per cent of the amount of the bonds issued to the attorney representing the board in the issuance and sale of said bonds. The amount paid the bond attorney for passing on the validity of such bonds would not be included in the amount. Ops Atty Gen, 1937-39, p 87.

This section applies to interest bearing notes issued by the county as well as to bonds. It applies to all notes and bonds issued by the board of supervisors of the county; that is, where the board of supervisors issues bonds for a school district, road district, or other taxing district, they could employ an attorney to perform the duties required. In such cases the fee should be paid out of the proceeds of the bond issue rather than the general county fund, or other funds. Ops Atty Gen, 1937-39, p 119.

The board of supervisors would not be authorized to employ additional advisory counsel if the amount paid such extra counsel plus the amount paid the regularly retained attorney exceed $600.00. Ops Atty Gen, 1939-41, p 118.

County board of supervisors has discretionary authority to employ legal counsel in civil cases in which the county is interested. Sanders, Dec. 18, 1991, A.G. Op. #91-0962.

Miss. Code Section 19-3-47(1)(c) provides express authority for county boards of supervisors to employ and, subject to limitations enumerated in statute, to compensate one or more attorneys in matter of issuance of bonds and drafting of orders and resolutions in connection therewith; attorney so employed who in fact provides such services may be attorney who is also separately employed as board's regular attorney; and, maximum compensation limitations imposed by Miss. Code Section 19-3-47(1)(c) do not apply to payment of professional fees to bond counsel of national repute whose opinion is required by bond buyers or who is retained to promote marketability of bond issue; nor does it apply to professional fees of state bond attorneys. Walters, Jan. 14, 1993, A.G. Op. #982-0984.

Additional compensation paid to the board attorney should be paid from the county general fund. However, if such additional service performed by the attorney involves a road fund, then payment for those services should come from the road fund involved. Hemphill, February 23, 1995, A.G. Op. #95-0068.

Section 19-3-47 requires the board to document on the minutes the necessity and duties of special counsel prior to the making of an appointment. Appointment of the particular person to serve as the special counsel may be delegated to the county administrator. Anderson, September 13, 1996, A.G. Op. #96-0471.

While a county is authorized pursuant to Section 19-3-47(1)(b) to employ counsel where it is determined that the matter is one in which the county is interested, there is no authority for a county to donate funds to pay private legal fees. Rather, the county can expend money for legal fees for representation of the county itself when, for instance, it is a party in a legal proceeding. Walters, November 8, 1996, A.G. Op. #96-0738.

Provided the employment was made prior to services being rendered, a board of supervisors could employ counsel and pay the lawful fees and expenses incurred in a particular case. Southerland, May 17, 2002, A.G. Op. #02-0270.

A county board of supervisors may not pay the board attorney on an hourly basis for all his services. In the event the board finds that there are special cases or circumstances which are not within the scope of the duties of the regular board attorney and that additional legal services are reasonable and necessary for conducting the county's business, it has discretion to hire either the board attorney or another attorney on an hourly fee contract to attend to those additional legal needs. Flanders, May 7, 2004, A.G. Op. 04-0186.

A county board of supervisors may not pay the expenses of the board attorney in providing his services. Flanders, May 7, 2004, A.G. Op. 04-0186.

Termination of a board attorney prior to expiration of his or her one-year term may only be for cause and due process must be afforded. Flanders, May 7, 2004, A.G. Op. 04-0186.

Counsel for a board of supervisors is a county employee and not an independent contractor. Flanders, May 7, 2004, A.G. Op. 04-0186.

Subject to the appropriate findings, the county board of supervisors had the authority to provide defense counsel for individual public defender attorneys in an action arising from complaints against the public defender system used by the county. Ross, Aug. 27, 2004, A.G. Op. 04-0386.

County boards of supervisors are authorized by Section 19-3-47(1)(b) to employ counsel in all civil cases in which the county is interested, which includes employing counsel to represent a county official who has been sued individually. Coleman, Oct. 20, 2006, A.G. Op. 06-0520.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 194 et seq.

Employment of attorney to prosecute county claims, 4 Am. Jur. Legal Forms, Counties, Form 4:1158.

§ 19-3-49. Employment of counsel where there is no elected county prosecuting attorney; salary of Hancock County prosecuting attorney.

(1) In all counties of this state wherein there is no elected county prosecuting attorney, the boards of supervisors shall have the power and authority to employ a competent attorney to appear and prosecute in cases requiring the services of the county prosecuting attorney. The compensation paid to the person so employed shall be paid from the general fund of such

county and shall not exceed, during any calendar year, the amount authorized by law to be paid as salary to the county prosecuting attorney in such county. The employment of a county prosecuting attorney as authorized by this section shall be pursuant to a contract which shall provide that the salary of such county prosecuting attorney shall not be reduced, increased or terminated for the period of the contract. Such contract shall be for the period of the remainder of the term of office of the board of supervisors which employs the county prosecuting attorney; however, the contract shall provide expressly or by reference to this section that the contract shall be abrogated upon the creation and filling of the office of elected county prosecuting attorney.

(2) Notwithstanding any of the provisions of subsection (1) of this section to the contrary, the board of supervisors of Hancock County may pay the attorney hired to appear and prosecute cases requiring the services of a county prosecuting attorney an annual salary of Forty-five Thousand Dollars ($45,000.00). The Legislature finds and declares that the annual salary authorized by this section is justified in Hancock County for the following reasons:

(a) The addition of a justice court judge in January 2004 created a total of three (3) judges in the county and requires the attorney hired to appear and prosecute cases requiring the services of a county prosecuting attorney to spend additional time in court; and

(b) The population of Hancock County increased from thirty-one thousand seven hundred sixty (31,760) in 1990, to forty-two thousand nine hundred sixty-seven (42,967) in 2000, which placed it in the top ten percent (10%) of the fastest growing counties in the state; and

(c) There was a significant increase in the number of cases filed in justice court and cases appealed to a higher court; and

(d) The attorney hired to appear and prosecute cases requiring the services of a county prosecuting attorney is responsible for handling a large number of drug, alcohol and mental commitment proceedings.

SOURCES: Codes, 1942, § 2958.3; Laws, 1950, ch. 267; Laws, 1978, ch. 509, § 4; Laws, 2004, ch. 447, § 1; Laws, 2006, ch. 363, § 1, eff from and after July 1, 2006.

Cross References — Election to abolish office of county prosecuting attorney, see § 19-23-3.

Prosecution responsibilities of county attorney employed pursuant to this section where there is no elected county prosecuting attorney, see § 19-23-11.

Effect on powers of district attorney when there is no elected county prosecuting attorney, see § 25-31-11.

Employment of attorney under this section to represent state in proceedings under Implied Consent Law, see § 63-11-23.

ATTORNEY GENERAL OPINIONS

In counties where there is no elected county prosecuting attorney, the county board of supervisors should appoint an attorney to appear and prosecute in cases requiring the services of such an attorney. Strugeon, Jan. 8, 1992, A.G. Op. #91-0917.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 194 et seq.

§ 19-3-51. Power of the board to subpoena witnesses and cite for contempt.

The board of supervisors shall have power to subpoena witnesses in all matters coming under its jurisdiction and to fine and imprison any person for a contempt committed while they are in session, the fine not to exceed Fifty Dollars ($50.00), and the imprisonment not to extend beyond the continuance of the term. The person so fined or imprisoned may appeal to the circuit court, as in other cases, from the order or judgment of the board, and such appeal shall operate as a supersedeas.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 5 (8); 1857, ch. 59, art 9; 1871, § 1356; 1880, § 2138; 1892, § 283; 1906, § 301; Hemingway's 1917, § 3674; 1930, § 206; 1942, § 2881.

§ 19-3-53. Collection of fines imposed by board.

When a fine shall be imposed upon any person by the board of supervisors, by virtue of any provision of law, the board shall cause the person to be summoned to appear at a succeeding meeting to show cause why the judgment for such fine shall not be made final. If sufficient cause be not shown at the return-day of the summons, the judgment shall be made final, with costs, and the clerk shall issue a capias pro finem therefor, as for fines in the circuit court, which shall be made returnable at the next regular meeting of the board. If good cause be shown, the board may set aside the fine, upon payment of costs. The clerk and sheriff shall be entitled to like fees, for services, as upon similar proceedings in the circuit court.

SOURCES: Codes, Hutchinson's 1848, ch. 10, art 7 (42); 1857, ch. 15, art 36; 1871, § 2369; 1880, § 863; 1892, § 3936; 1906, § 4448; Hemingway's 1917, § 7128; 1930, § 207; 1942, § 2882.

Cross References — Payment of fines and forfeitures into county treasury, see Miss. Const. Art. 14, § 261.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 361.

§ 19-3-55. Elections for county purposes may be ordered by petition of qualified electors.

Unless otherwise specifically required by law, the board of supervisors of any county shall upon the filing of a petition touching any matter affecting the entire county and over which it has jurisdiction, signed by twenty-five per cent. of the qualified electors of the county, either pass an order putting said proposition in force and effect or immediately submit the same to a vote of the qualified electors of the county, after giving thirty days' notice of said election, said notice to contain a statement of the proposition to be voted on at said election. If said election shall result in favor of the proposition petitioned for, the board of supervisors, shall pass the necessary order, to put the said proposition in force and effect. In the event the election shall result against the proposition submitted, no other election shall be held on the same, or substantially the same proposition within twelve months of the date of the prior election. This section shall not, however, apply to the creation of taxing districts.

SOURCES: Codes, 1930, § 310; 1942, § 3018; Laws, 1922, ch. 290.

Cross References — Election to approve issue of county bonds, see §§ 19-9-11 et seq.

Elections under the Local Option Alcoholic Beverage Control Law, see §§ 67-1-11, 67-1-13.

Election on question of permitting sales, etc. of wine and beer, see § 67-3-7.

JUDICIAL DECISIONS

1. In general.
2. Notice.
3. Petitions.
4. —Sufficiency.
5. —Hearing.

1. In general.

A county board of supervisors had proper jurisdiction to call an election under the statute where no solid waste plan had been approved and no contract had been finalized and the board's minutes contained an opinion of the Attorney General that the board did in fact have jurisdiction to call an election. Mississippi Waste of Hancock County, Inc. v. Board of Supvrs., 818 So. 2d 326 (Miss. 2001).

A county board of supervisors acted properly under the statute when it suspended contract negotiations with the appellant regarding a privately owned waste facility and called for a special election. Mississippi Waste of Hancock County, Inc. v. Board of Supvrs., 818 So. 2d 326 (Miss. 2001).

Section 19-3-55 does not require a matter to be spread on the board of supervisors' minutes in order for the board to act on a petition. Leigh v. Board of Supvrs., 525 So. 2d 1326 (Miss. 1988).

Under the provisions of Code 1942, § 3018 the board of supervisors has authority to pass the necessary order to place the question of a beer referendum on the record on the ballot and, conversely, the board has authority to reject an election resulting from fraud or mistake. Thornton v. Wayne County Election Comm'n, 272 So. 2d 298 (Miss. 1973).

A board of supervisors may not call an election at county expense to determine by an unofficial vote the will of the electorate "just for their information". Gill v. Woods, 226 So. 2d 912 (Miss. 1969).

Where a board of supervisors entered no order determining the necessary jurisdictional prerequisites required by law, an order calling an election was void and all steps taken thereafter were void. Gill v. Woods, 226 So. 2d 912 (Miss. 1969).

A board of supervisors has no authority to act on a petition for an election until it has determined by an order spread on its minutes that it has jurisdiction of the matter, that the petition complied with the statute, and that the requisite number of electors had signed the petition; and in so doing the board acts judicially. Gill v. Woods, 226 So. 2d 912 (Miss. 1969).

Under a statute allowing the county to determine that it shall be unlawful to transport beer of alcoholic content not more than 4 per cent, an indictment which charged violation of the statute but did not set out each step by which county effected its "determination" but stated that the county determined was sufficient. Hoyle v. State, 216 Miss. 330, 62 So. 2d 380 (1953), but see Dantzler v. State, 542 So. 2d 906 (Miss. 1989).

This section [Code 1942, § 3018] governs a general election ordered upon a petition to exclude beer and wine from a county and the primary election laws are not applicable thereto. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

2. Notice.

In the absence of the 30-day notice required by this section [Code 1942, § 3018], an election ordered by a board of supervisors was void. Gill v. Woods, 226 So. 2d 912 (Miss. 1969).

Notice of local option election on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, as notice required to be given of such election is governed by this section (Code 1942, § 3018) and not by § 3294, Code of 1942. Duggan v. Board of Supvrs., 207 Miss. 854, 43 So. 2d 566 (1949).

The contemplated method of giving notice is by publication in a newspaper. Henry v. Board of Supvrs., 203 Miss. 780, 34 So. 2d 232 (1948), error overruled, 203 Miss. 789, 35 So. 2d 317 (1948).

Final order of board of supervisors from which appeal will lie in the exclusion of light wines and beer in the county, is the order showing affirmatively an adjudication as to the sufficiency of the notice of the election and publication according to law, that the notice contained a statement of the proposition to be voted on at the election and that the report of the election commissioners disclosed that a majority of those voting in the election had voted in favor of exclusion. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Objection that notice for election hereunder, for the exercise of local option in the county, was signed by the president and clerk of the board of supervisors instead of by the election commissioners of the county, was without merit where the notice given was sufficient in form and substance, and pursuant thereto the election commissioners proceeded to hold the election and certify the result thereof as required by law. Sides v. Board of Supvrs., 190 Miss. 420, 200 So. 595 (1941).

Where the board of county supervisors directed the election commissioners to give the notice required in respect to an election for local option and also directed the clerk to give the required notice but he failed to do so, and the notice by the commissioner specifically referred to the order of the board as the authority by which it was given, the notice was sufficient as against the contention that the notice must be given by the board of supervisors; it was not necessary that two notices should be given or that the notice should appear in more than one public newspaper of the county. Barron v. Board of Supvrs., 184 Miss. 376, 185 So. 806 (1939).

A special election for local option in a county was found to be in all respects legal, where the order of the board of supervisors in passing upon the sufficiency of the petition for a special election recited that it was signed by more than 20 per cent of the qualified voters of the county, and the board's order after the election recited that due and proper notice was given as required by statute and proper proof of publication had been made and filed. Day v. Board of Supvrs., 184 Miss. 611, 185 So. 251 (1939).

The manner of publication of notice for local option election is controlled by general statute requiring 30 days' notice of election on any matter affecting the entire county. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

Six weeks' publication of notice of local option election, effected by order of clerk of board of supervisors rather than of election commissioners, without board's issuing commission to election commissioners directing the commissioners to hold election, was proper irrespective of applicability of general statute authorizing board of supervisors to call election, where election commissioners actually held the election in conformity with law. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

3. Petitions.

Where a petition was signed and filed with the clerk of the board of supervisors containing more than 20 percent of the qualified electors of the county, praying that the county road bonds be not issued until after election has been held, and where later a number of the petitioners requested the removal of their names from the original petition and this made a total of less than 20 percent of qualified voters remaining on original petition, the board of supervisors could direct the sale of bonds without holding of election. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

It is the duty of a board of supervisors to canvass the names on petitions filed with it in order to determine whether or not such petitions contain the required number and the requisite qualifications, and, in doing so, the board acts judicially. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

In determining whether required number of qualified electors had petitioned for election to determine whether county board bonds should be issued, the board of supervisors acts judicially. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

Persons who have signed a petition calling for election to determine whether county road bonds should be issued and the petition has been filed with the board of supervisors, have the right to take their names off at any time before final action by the board. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

4. —Sufficiency.

An order by the board of supervisors adjudicating the sufficiency of the petition and ordering an election, after a secret session from which interested parties and their attorneys were excluded, and a final judgment of the board excluding wine and beer from a county, pursuant to such election, are without authority of law and a denial of due process. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

In determining the sufficiency of a petition to exclude wine and beer from a county as regards the necessary number of signatures of qualified voters, the registration books are not conclusive evidence that the persons registered are qualified electors. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

Adjudication of county board of supervisors as to sufficiency of signatures to petition for an election to determine whether traffic in light wines and beers should be excluded from the county, was interlocutory, and entire cause, including that issue, must on pertinent and competent protest be adjudicated by the board upon trial before the final judgment could be entered in the case. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

Fact that some citizens not in privity with present protestants had appeared before county board of supervisors and contested sufficiency of petition for an election to determine whether traffic in light wines and beer should be excluded from county, on ground that petition did not contain the required 20 per cent of the qualified electors when the board adjudicated the petition to be sufficient, did not estop other taxpayers from subsequently contesting the petition on the same grounds, where the present protestants had no notice of the hearing on the original petition and did not participate therein, since the hearing on the original petition did not close the question as to the sufficiency of the petition. Costas v.

Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

With respect to the requirement that upon filing of petition the board shall "immediately submit the same to a vote," the board may delay its decision in order to afford an opportunity to itself and others to examine and verify the petitions and to check their sufficiency. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Order of board of supervisors, adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in county, was an interlocutory order and not a final order, requiring appeal therefrom within ten days in order to question sufficiency of petitions. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

5. —Hearing.

Board of county supervisors, after an election wherein it was determined that traffic in light wines and beer should be excluded from the county, must allow protestants a hearing on issue whether the petition for the election contained the required 20 per cent of the qualified electors. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

ATTORNEY GENERAL OPINIONS

If the proposed ordinance would not affect the entire county, then an election may not be held pursuant to Section 19-3-55. Gex, May 3, 1996, A.G. Op. #96-0180.

A county's direction to a regional authority to submit a local plan and a county's resolution to the permit board, both as allowed and directed by § 17-17-325, could be subject to a petition under this section (modifying opinion to Gex dated April 9, 1999). Cuevas & Compretta, May 27, 1999, A.G. Op. #99-0266.

A revision of an approved local solid waste management plan for a county by the board of supervisors to include a proposed landfill and the expansion of the service area is a matter requiring specific approval by the board of supervisors and, further, such approval could be subject to a petition under the statute (modifying opinion to Gex dated April 9, 1999). Cuevas & Compretta, May 27, 1999, A.G. Op. #99-0266.

The proper political entity to receive petitions pursuant to the statute is the board of supervisors. Benvenutti, March 17, 2000, A.G. Op. #99-0216.

The practice of boards of supervisors to seek certification from their respective county circuit clerks as to the number of signatures of qualified electors appearing on such petitions prior to the adjudication of the sufficiency of those petitions is, in most if not all cases, necessary to protect the integrity of the process since circuit clerks are the custodians of the registration records. Benvenutti, March 17, 2000, A.G. Op. #99-0216.

A county board of supervisors may place the issue of Sunday sales of beer and light wines before the electorate by means of a non-binding referendum. Hemphill, Apr. 4, 2003, A.G. Op. 03-0061.

A petition filed and certified pursuant to Section 19-3-55 requires a board of supervisors to adopt the proposition set forth in the petition or, in the alternative call an election on the proposition provided that the essential elements of the statute are present. Carroll, Dec. 9, 2005, A.G. Op. 05-0574.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections §§ 270 et seq.

§ 19-3-57. Tickets; what shall be printed on same.

The tickets to be used in an election pursuant to Section 19-3-55 shall have a substantial synopsis of the proposition petitioned for, printed thereon, and next below shall have the words, "For the Proposition"; and the words, "Against the Proposition", next below. In making up his ticket the voter shall, if he favors the proposition, make a cross (x) opposite the words, "For the Proposition" on his ticket, and if he does not favor the proposition, he shall make a cross (x) opposite the words, "Against the Proposition."

SOURCES: Codes, 1930, § 311; 1942, § 3019; Laws, 1922, ch. 290.

§ 19-3-59. Appropriation of county funds.

The board of supervisors shall direct the appropriation of money that may come into the county treasury, but shall not appropriate the same to an object not authorized by law.

SOURCES: Codes, 1857, ch. 59, art 30; 1871, § 1378; 1880, § 2158; 1892, § 317; 1906, § 338; Hemingway's 1917, § 3711; 1930, § 256; 1942, § 2941.

Cross References — Appropriations from the county advertising fund, see § 19-9-103.

Preparation of county budget generally, see §§ 19-11-1 et seq.

Penalty for receiving unauthorized appropriations, see § 19-13-35.

Appropriations for state charity hospitals, see § 41-11-7.

Appropriations for developing potential of Pearl River, see § 51-9-11.

JUDICIAL DECISIONS

1. In general.

The action of a county board of supervisors in terminating federal funds to the sheriff's department because of racial discrimination and other misconduct was within the discretion afforded the board by this section. Smith v. Cooper, 454 F. Supp. 548 (N.D. Miss. 1978).

Wherever county is authorized to build bridge and statute does not provide for specific tax or fund for payment, board of supervisors may levy tax on property of county to pay for bridge and may appropriate money for that purpose. Panola County v. Town of Sardis, 171 Miss. 490, 157 So. 579 (1934).

A judgment plaintiff may by mandamus compel the county to pay the judgment out of the general funds if there be sufficient money therein and may compel the board to make a levy sufficient to pay same where there are no funds available. Town of Crenshaw v. Jackson, 122 Miss. 711, 84 So. 912 (1920).

The members of the board incur liability by voting money to an object not authorized by law, but not by an irregularity in voting it to an authorized object. Paxton v. Baum, 59 Miss. 531 (1882).

An order of the board appropriating money to any object not authorized by law affords no protection to the person receiving the money. Howe v. State, 53 Miss. 57 (1876), but see Harrison County v. Gulfport, 557 So. 2d 780 (Miss. 1990).

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 314-328.

§ 19-3-61. Employment of comptroller or bookkeeper.

The board of supervisors in each county may employ and compensate at least one (1) qualified individual who shall serve as comptroller or bookkeeper for funds received, expended or handled by the board. The board may also employ and compensate such clerical assistance as the comptroller or bookkeeper may require to effectively discharge the duties imposed by this chapter, such compensation to be paid from the general fund, road funds or other available funds of such county.

SOURCES: Laws, 1974, ch. 502, § 1; Laws, 1986, ch. 351, eff from and after passage (approved March 20, 1986).

ATTORNEY GENERAL OPINIONS

With regard to secretaries, Miss. Code Section 19-3-61 provides that board of supervisors may employ at least one qualified individual to serve as comptroller or bookkeeper, and may also "employ and compensate such clerical assistants as the comptroller or bookkeeper may require"; thus, board of supervisors may, in its discretion, employ part-time secretary, if such is determined to be reasonable and necessary to accomplish needs of county. McKenzie, Feb. 1, 1993, A.G. Op. #92-0982.

§ 19-3-63. Vacations and sick leave for county employees; payment or compensatory time for public safety employees for holidays; closure of county offices for funeral of deceased elected or appointed official.

(1) The board of supervisors of each county by resolution adopted and placed on its minutes may establish a policy of sick leave and vacation time for employees of the county not inconsistent with the state laws regarding office hours and holidays.

(2) Notwithstanding the provisions of subsection (1) of this section, each elected official of the county, other than a member of the board of supervisors, who is authorized by law to employ, may, by written policy filed with the clerk of the board of supervisors, establish a policy of sick leave and vacation time for his employees which may be inconsistent with the policy established by the board of supervisors but which shall not be inconsistent with the state laws regarding office hours and holidays. If such elected official fails to adopt and file such a policy with the clerk of the board of supervisors, the policy adopted by the board of supervisors for sick leave and vacation time for county employees shall apply to employees of such elected official.

(3) The board of supervisors of any county and each elected official of the county who is authorized by law to employ shall enact leave policies to ensure

that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other county employee is paid.

(4) The board of supervisors of each county by resolution adopted and placed on its minutes may establish a policy to close county offices if an elected or appointed county official dies to allow county employees of the deceased elected or appointed official to attend the funeral of such deceased or appointed official.

SOURCES: Laws, 1974, ch. 502, § 2; Laws, 1990, ch. 313, § 1; Laws, 2007, ch. 546, § 1; Laws, 2010, ch. 337, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (4).
Cross References — Legal holidays, see § 3-3-7.

§ 19-3-65. Membership in national and state organizations of governmental officials.

The board of supervisors in each county is hereby authorized and empowered, in its discretion, to do all things and to perform all acts which may be necessary to join the National Association of County Officials and/or State and County Administrator Association.

The board of supervisors in each county is hereby authorized and empowered, in its discretion, to pay from the county general fund the required fees and dues for membership in the National Association of County Officials and the Mississippi Association of Supervisors.

SOURCES: Laws, 1976, ch. 384, eff from and after passage (approved April 27, 1976).

§ 19-3-67. Traveling expenses of supervisors.

(1) When any member of any board of supervisors shall be required to travel outside of his county but within the State of Mississippi in the performance of his official duties, such member shall receive as expenses of such travel the same mileage and actual and necessary expenses for food, lodging and travel by public carrier or private motor vehicles as is allowed state officers and employees pursuant to the provisions of Section 25-3-41, Mississippi Code of 1972. Provided, however, mileage shall not be authorized when such travel is done by a motor vehicle owned by the county.

(2) When any member of any board of supervisors shall be required to travel outside the State of Mississippi in the performance of his official duties, such member shall receive as expenses of such travel the same mileage and actual and necessary expenses for food, lodging and travel by public carrier or private motor vehicles as is allowed state officers and employees pursuant to the provisions of Section 25-3-41, Mississippi Code of 1972. Provided, however, such travel must receive the prior approval of the board before it is undertaken, and such approval shall be spread upon the minutes of the board.

(3) Except as hereinafter provided with respect to mileage, no expenses shall be authorized or approved by any board of supervisors for travel by the member of such board within the county of such board. With respect to mileage, when travel within the county by a member of such board is done by a motor vehicle owned by the county, mileage shall not be authorized; however, when any member of such board does not have a county-owned motor vehicle regularly assigned to him for his use or when a county-owned motor vehicle is not otherwise available for his use at the time when travel is necessary, and he is required to travel within the county in the performance of his official duties using his private motor vehicle, then he may be reimbursed for mileage in the same manner as provided in Section 25-3-41, Mississippi Code of 1972.

(4) Itemized expense accounts shall be submitted by the member on forms prescribed by the Auditor of Public Accounts for reimbursement of expenses for state officers and employees in such numbers as the county may require. No expenses authorized in this section shall be reimbursed unless the expenses have been authorized or approved by a vote of a majority of the members of the board duly made and spread upon the minutes of such board.

(5) Expenses authorized in this section shall be published by the board of supervisors in a newspaper of general circulation published in the county; and, if no such newspaper is published in the county, then in a newspaper published elsewhere in the state which has a general circulation in such county. The publication shall be a detailed accounting of the expenses authorized to each member of the board. The cost of publishing such expense accounts shall be paid by the county pursuant to the provisions of Section 19-3-35.

SOURCES: Laws, 1977, ch. 461; Laws, 1984, ch. 432; Laws, 1996, ch. 456, § 1, eff from and after July 1, 1996.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

ATTORNEY GENERAL OPINIONS

If members of the board of supervisors do not have county owned motor vehicles assigned to them, nor county motor vehicles which would otherwise be available for their use, in using their private motor vehicles mileage may be paid from the general fund, or if the purpose of the travel was relative to inspection or maintenance of the county roads then from the road fund. See Section 19-3-67. Gex, August 29, 1996, A.G. Op. #96-0582.

§ 19-3-68. Supervisors and county employees authorized to use credit cards to pay travel expenses.

The board of supervisors of any county may acquire one or more credit cards which may be used by members of the board of supervisors and county employees to pay expenses incurred by them when traveling in or out of the state in the performance of their official duties. The chancery clerk or county purchase clerk shall maintain complete records of all credit card numbers and all receipts and other documents relating to the use of such credit cards. The supervisors and county employees shall furnish receipts for the use of such credit cards each month to the chancery clerk or purchase clerk who shall submit a written report monthly to the board of supervisors. The report shall include an itemized list of all expenditures and use of the credit cards for the month, and such expenditures may be allowed for payment by the county in the same manner as other items on the claims docket. The issuance of a credit card to a supervisor or county employee under the provisions of this section does not authorize the supervisor or county employee to use the credit card to make any expenditure that is not otherwise authorized by law. Any supervisor or county employee who uses the credit card to make an expenditure that is not approved for payment by the board shall be personally liable for the expenditure and shall reimburse the county.

SOURCES: Laws, 2001, ch. 511, § 3, eff from and after passage (approved Mar. 29, 2001.)

§ 19-3-69. Authority to contract for professional services.

The board of supervisors of each county may, in its discretion, contract with certain professionals when the board determines that such professional services are necessary and in the best interest of the county.

The board of supervisors shall spread upon its minutes its finding that the professional services are necessary and in the best interest of the county. The contract for professional services shall be approved by the attorney for the board of supervisors and made a part of the minutes. Notwithstanding any other provision of law, the board of supervisors may request and consider the price of the services in its initial and subsequent contact with professionals.

A professional within the meaning of this section shall be limited to:

(a) Attorneys at law, admitted to practice law in this state by the State Board of Bar Admissions;

(b) Accountants, certified by the State Board of Public Accountancy;

(c) Architects, licensed by the State Board of Architecture;

(d) Engineers and land surveyors, registered by the State Board of Registration for Professional Engineers and Land Surveyors;

(e) Physicians, licensed by the State Board of Medical Licensure;

(f) Appraisers, licensed by the Mississippi Real Estate Commission or as otherwise provided by law or ad valorem appraisers holding the MAE designation from the Department of Revenue;

(g) Real estate brokers, licensed by the Mississippi Real Estate Commission;

(h) In the sale of personal property pursuant to the provisions of Section 19-7-5, auctioneers who meet standards established by the State Department of Audit.

SOURCES: Laws, 1986, ch. 366; Laws, 1990, ch. 532, § 2; Laws, 2004, ch. 398, § 1; Laws, 2011, ch. 413, § 1, eff from and after July 1, 2011.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Amendment Notes — The 2011 amendment added the last sentence in the second paragraph; and added "or ad valorem appraisers holding the MAE designation from the Department of Revenue" in (f).

JUDICIAL DECISIONS

Miss. Code Ann. § 27-35-101 requires a county to advertise for bids for reappraisal services and has to be read together with Miss. Code Ann. § 27-35-165 and Miss. Code Ann. § 19-3-69. Hence, court erred in holding that a county had the authority to enter into a contract for appraisal services with an appraiser without advertising for bids; county was required to comply with the advertising-for-bids provisions of Miss. Code Ann. § 27-35-101 for its reappraisal work. State ex rel. Hood v. Madison County, 873 So. 2d 85 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

County board of supervisors may employ or contract with independent certified public accounting firm to assist in audit of community hospital owned and funded in part by county. Hagwood, Dec. 16, 1992, A.G. Op. #92-0949.

County is not prohibited from entering contract with professional auctioneer wherein auctioneer guarantees minimum price but such arrangement must provide that sale be arms length transaction to highest bidder, and further that auctioneer, his agent, and members of his firm are prohibited from purchasing property being auctioned. Dyson, July 13, 1993, A.G. Op. #93-0322.

Pursuant to Section 19-3-69, the Jackson County Port Authority and/or Jackson County may hire a realtor to secure information concerning what property is available for purchase by the county and the Port Authority for industrial expansion. The realtor may be paid an hourly rate and, in the event options to buy property are later exercised, a commission be paid the realtor, minus any amount already paid pursuant to the hourly rate. Hunter, October 4, 1996, A.G. Op. #96-0508.

If a proposed contract is to survey and appraise the county, competitive bidding is required, but if a contract is to provide some other professional service to the county, no competitive bidding is necessary. Bean, January 23, 1998, A.G. Op. #97-0797.

Subject to the appropriate findings, the county board of supervisors had the authority to provide defense counsel for individual public defender attorneys in an action arising from complaints against the public defender system used by the county. Ross, Aug. 27, 2004, A.G. Op. 04-0386.

A county may utilize the use of an internet auction to sell surplus county property as long as it complies with Section 19-7-5. Webb, May 19, 2006, A.G. Op. 06-0198.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 189 et seq.

CJS. 20 C.J.S., Counties §§ 230 et seq.

§ 19-3-71. Appointment of county fire coordinator.

The board of supervisors in each county shall appoint a county fire coordinator, and may compensate him from any available county funds. The county fire coordinator shall serve as a liaison between the Commissioner of Insurance and local governments and shall be a fire fighter who is a member of a fire crew of a volunteer or municipal fire department serving any fire district, county or municipality. The director of the local organization for emergency management serving the county may be such coordinator if he is a fire fighter as described in this section.

SOURCES: Laws, 1988, ch. 584, § 1; Laws, 1989, ch. 329, § 1, eff from and after July 1, 1989.

Cross References — Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standard established by the commissioner of insurance as provided in this section, see § 83-1-39.

ATTORNEY GENERAL OPINIONS

Responsibility of inspections for fire code compliance of commercial establishments in Hancock County is that of the county appointed Fire Coordinator/Arson Investigator. Adam, Mar. 4, 2005, A.G. Op. 05-0049.

The County Arson Investigator has complete control over the scene of a fire pursuant to the law enforcement authority granted to him by the Hancock County Board of Supervisors and Sheriff as the Arson Investigator. Adam, Mar. 4, 2005, A.G. Op. 05-0049.

Since the position of county fire coordinator and the office of alderman exercise core powers of two different departments of government, executive and legislative, Miss. Const., Art. 1, § 2, would prohibit an individual from occupying said position and office at the same time. Smith, Aug. 8, 2005, A.G. Op. 05-0380.

§ 19-3-73. Authority of county to maintain real property owned or leased by fire protection district.

In addition to the maintenance authority granted in Section 83-1-39, Mississippi Code of 1972, the board of supervisors of any county is hereby authorized and empowered, in its discretion, to grade, gravel, shell and/or maintain real property, including roads or driveways thereof, owned by a municipal fire protection district or county fire protection district, or leased for a term of not less than twenty (20) years by a municipal fire protection district or a county fire protection district, as necessary for the effective and safe operation of such district. Any action taken by the board of supervisors under the authority of this section shall be spread upon the minutes of the board of supervisors when the work is authorized.

SOURCES: Laws, 1988, ch. 596, § 2, eff from and after July 1, 1988.

ATTORNEY GENERAL OPINIONS

Provisions of Sections 19-3-73 and 83-1-39(9) are sufficiently broad to authorize county board of supervisors to pave parking and/or driveways of volunteer or municipal fire department. Trapp, Feb. 24, 1994, A.G. Op. #94-0079.

Based upon the authority granted to counties in Sections 19-3-72 and 83-1-39(9), and upon counties' authority to allow fire protection districts the use of county-owned vehicles and equipment, a county board of supervisors would have the authority to remove trees from real property owned by a fire protection district in the county. White, Sept. 22, 2006, A.G. Op. 06-0433.

§ 19-3-75. Maintenance of roads or driveways to public cemeteries.

The board of supervisors of any county is hereby authorized and empowered, in its discretion, to grade, gravel or shell and/or to repair and maintain roads or driveways to public cemeteries.

SOURCES: Laws, 1988, ch. 493, § 2, eff from and after passage (approved May 3, 1988).

ATTORNEY GENERAL OPINIONS

Under Section 19-3-75, the board of supervisors has the discretionary authority "to grade, gravel or shell and/or to repair and maintain roads or driveways to public cemeteries." Welch, February 23, 1995, A.G. Op. #95-0056.

The term "public cemetery" means a cemetery open to all people, although the determination of whether a particular cemetery is a "public cemetery" is a question of fact. Sanders, May 17, 2002, A.G. Op. #02-0246.

Section 19-3-75 permits the county to maintain only roads or driveways leading from a public road to the public cemetery, and not other roads within the cemetery. The statute does not authorize the paving of an unpaved cemetery driveway. Williams, May 12, 2006, A.G. Op. 06-0153.

§ 19-3-77. Programs of professional education for county purchase clerks, receiving clerks, inventory control clerks, and members of county boards of supervisors.

(1) There are hereby established programs of professional education for county purchase clerks, receiving clerks and inventory control clerks. The programs shall be offered at least every four (4) years at the beginning of terms

of office for county elected officials and at other times when the State Auditor has been notified by a board of supervisors that a vacancy in the position of purchase clerk, receiving clerk or inventory control clerk has been filled with an uncertified appointee. The curriculum for each program shall be designed by the State Auditor. Program administration, coordination, delivery and attendance verification shall be conducted by the Community Development Department of the Mississippi Cooperative Extension Service. The professional education programs offered at the beginning of terms of office shall be scheduled in each planning and development district; provided, however, the Community Development Department may schedule a program in one geographical area encompassing several planning and development districts rather than scheduling separate programs in each planning and development district within that geographical area. Participants who successfully complete a program shall be certified by the State Auditor and shall display the certificate awarded in a prominent public place within their offices.

Any participant who travels outside the county of his employment to attend a professional education program shall receive as reimbursement of the expense of such travel the same mileage and actual and necessary expenses for food, lodging and travel as allowed state officers and employees pursuant to Section 25-3-41, Mississippi Code of 1972; however mileage shall not be allowed when travel is by motor vehicle owned by the county.

All or any part of the expense of a professional education program may be defrayed by the imposition of fees in a reasonable amount established by the State Auditor. Any fees imposed to defray expenses of a professional education program shall be paid by the county for participants.

(2) There is hereby established a program of professional education for members of county boards of supervisors. The program shall be offered at the beginning of each term of office for members of the boards of supervisors and may be offered more frequently at the discretion of the Committee on Supervisor Education. The curriculum of the program shall be designed by the Committee on Supervisor Education, which shall be composed of the following members:

(a) Two (2) members from the State Department of Audit designated by the State Auditor.

(b) Two (2) members from the Mississippi Association of Supervisors designated by the executive director of the association.

(c) One (1) member from the Mississippi Cooperative Extension Service designated by the director of the service.

(d) One (1) member from the Stennis Institute of Government at Mississippi State University designated by the director of the institute.

(e) One (1) member from the Judicial College of the University of Mississippi designated by the director of the judicial college.

(f) One (1) member from the Public Policy and Administration Program at Jackson State University designated by the Chairman of the Department of Political Science.

Program administration, coordination, delivery and attendance verification shall be conducted by the Community Development Department of the Mississippi Cooperative Extension Service in cooperation with the Mississippi Association of Supervisors. All or any part of the expense of the supervisor education program may be defrayed by the imposition of fees established by the Committee on Supervisor Education.

The primary resources for the supervisor education program shall be the State Department of Audit, the State Attorney General, the Judicial College of the University of Mississippi, the Stennis Institute of Government at Mississippi State University, the Public Policy and Administration Program at Jackson State University, the Mississippi Research and Development Center or its successor, and any other federal, state, local or university entities having expertise in specific topical areas.

Any fees imposed to defray expenses of the supervisor education program shall be paid by the county for members of the board of supervisors of such county enrolled in the program; and, additionally, when any supervisor travels outside of his county to attend a school, seminar or workshop approved by the Committee on Supervisor Education, he shall receive as reimbursement of expenses of such travel the same mileage and actual and necessary expenses for food, lodging and travel by public carrier or private motor vehicles as is allowed state officers and employees pursuant to the provisions of Section 25-3-41; however, mileage shall not be authorized when such travel is done by a motor vehicle owned by the county.

SOURCES: Laws, 1988 Ex Sess, ch. 14, § 31; Laws, 1993, ch. 595, § 1, eff from and after July 1, 1993.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 57-13-22 abolished the Mississippi Research and Development Center and transferred the functions to the Mississippi Department of Economic Development or to the University Research Center (see § 37-141-3). Section 57-1-54 provides that wherever the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Department of Economic and Community Development.

Cross References — Requirement that county purchase clerk and county receiving clerk successfully complete the professional education program offered for such clerks pursuant to this section, see § 31-7-101.

Requirement that county inventory control clerks successfully complete the professional education program offered for inventory control clerks, see § 31-7-107.

§ 19-3-79. Notice of intent to apply for gaming license; publication of notice; resolution authorizing gaming when no petition filed; petition to hold election on allowing legal gaming on cruise vessels; referendum; form of ballots; absence of petition or vote in favor of gaming; vote against gaming not to affect existing gaming operations.

(1) Any person, corporation or other legal entity required to obtain a state gaming license to conduct legal gaming aboard a cruise vessel or vessel, as defined in Section 27-109-1, as prescribed by the Mississippi Gaming Control Act shall, before applying for such license, provide the Mississippi Gaming Commission with a written notice of intent to apply for a license. The "notice of intent to apply for a gaming license" shall be on a form prescribed by the executive director of the commission and shall state the county in which the intending licensee desires to conduct legal gaming aboard a cruise vessel or vessel, as the case may be. Within ten (10) days after receipt of a notice of intent to apply for a gaming license, the commission shall require such person, corporation or legal entity to publish the notice once each week for three (3) consecutive weeks in a newspaper having general circulation in the county in which the intending licensee desires to conduct legal gaming aboard a cruise vessel or vessel, as the case may be.

(2) If no petition as prescribed in subsection (3) of this section is filed with the board of supervisors of the applicable county within thirty (30) days after the date of the last publication, the board of supervisors of such county shall adopt a resolution stating that no petition was timely filed and that legal gaming may henceforth be conducted aboard cruise vessels or vessels, as the case may be, in such county.

(3) If a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the registered voters of a county in which a notice of intent to apply for a gaming license is published is filed within thirty (30) days of the date of the last publication with the circuit clerk of the applicable county, the board of supervisors of such county shall authorize the circuit clerk to hold an election on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county on the date upon which such an election may be conducted under subsection (7). The referendum shall be advertised, held, conducted and the result thereof canvassed in the manner provided by law for advertising, holding and canvassing county elections.

(4) At such election, all qualified electors of such county may vote. The ballots used at such election shall have printed thereon a brief statement of the purpose of the election and the words "FOR LEGAL GAMING ABOARD CRUISE VESSELS (OR VESSELS) IN THE COUNTY AS PRESCRIBED BY LAW," and "AGAINST LEGAL GAMING ABOARD CRUISE VESSELS (OR VESSELS) IN THE COUNTY AS PRESCRIBED BY LAW." The voter shall vote by placing a cross (x) or check (√) mark opposite his choice on the proposition. If a majority of the qualified electors who vote in such election

shall vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, then legal gaming may henceforth be conducted aboard cruise vessels or vessels, as the case may be, in the county. If less than a majority of the qualified electors who vote in such election shall vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county, then gaming aboard cruise vessels or vessels, as the case may be, shall be prohibited in the county until such time as a subsequent election, held according to the restrictions specified in subsection (7), may authorize such legal gaming.

(5) In any county in which no petition is timely filed after a notice of intent to apply for a gaming license is published, or in which an election is held on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county and a majority of the qualified electors who vote in such election vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county, no election shall thereafter be held in that county pursuant to this section on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in that county.

(6) Notwithstanding any provision of this section or Sections 97-33-1, 97-33-7, 97-33-17, 97-33-25 and 97-33-27 to the contrary, if an election is held pursuant to this section which causes the conducting of gaming aboard cruise vessels to be prohibited in any county in which one or more cruise vessels were operating out of a port in the county on the effective date of this chapter, the prohibition on the conducting of gaming aboard cruise vessels in that county shall not apply to the conducting of legal gaming aboard any of those cruise vessels which were still operating out of a port in that county at the time of the election.

(7) If an election has been held on the issue of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in a county, and the authority to conduct such legal gaming has been denied by the electors of such county, then a subsequent election on such issue may not be held until:

(a) The date of the next succeeding general election in which the election for President of the United States occurs; or

(b) In the case in which the authority to conduct such legal gaming has been denied by the electors of such county at elections on three (3) different occasions, whether those occasions be successive or not, the date of the next succeeding general election occurring at least eight (8) years after the last of the three (3) occasions on which the electors denied the authority to conduct such legal gaming.

SOURCES: Laws, 1989, ch. 481, § 6; Laws, 1990, ch. 449, § 9; Laws, 1990, Ex Sess, ch. 45, § 145; Laws, 1993, ch. 588, § 1; Laws, 1997, ch. 505, § 1, eff from and after June 23, 1997 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Note — The United States Attorney General, by letter dated November 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1993, ch. 588, § 1.

The United States Attorney General, by letter dated June 23, 1997, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws 1997, ch. 505, § 1. The United States Attorney General also noted that this section includes provisions which are enabling in nature. Therefore, the preclearance of this section does not relieve local jurisdictions of their responsibility to seek Section 5 preclearance of any changes affecting voting that are adopted pursuant to this section.

Cross References — Licensing and regulation of cruise vessels, see § 27-109-1 et seq.

Regulation of schools and training institutions that teach or train gaming employees, see § 75-76-34.

Exception of certain cruise vessels from gambling prohibitions, unless voters of county have voted, as provided in this section, to prohibit gambling, see § 87-1-5.

Prohibition against betting, gaming and wagering, and exceptions applicable to vessels in counties not prohibiting it, see § 97-33-1.

Prohibition of gambling devices inapplicable where county has not voted pursuant to this section to prohibit gambling, see § 97-33-7.

Exception from provision providing for forfeiture of money and appliances related to gambling for cruise vessels, see § 97-33-17.

Exception from provision prohibiting pool-selling for cruise vessels, see § 97-33-25.

Exception from provision prohibiting betting on horse or yatch races or shooting matches for cruise vessels, see § 97-33-27.

ATTORNEY GENERAL OPINIONS

Since Harrison County has not prohibited gaming, the City of Long Beach may not restrict dockside gaming in the Long Beach Harbor; however, the city may restrict activities, such as gaming, on lands on which it holds a lease. Grisson, July 27, 1999, A.G. Op. #99-0253.

§ 19-3-81. Power of board to authorize sheriff to operate inmate canteen facilities; inmate canteen fund.

(1)(a) The board of supervisors of any county is hereby authorized and empowered, in its discretion, to allow the sheriff of such county to operate a facility or facilities to be known as an inmate canteen facility or facilities, the purpose of which is to make available certain goods and other items of value for purchase by inmates confined in the county jail of such county, employees of the county jail and persons visiting inmates or employees. The sheriff of such county shall promulgate rules and regulations for the operation of such a facility.

(b) If the board of supervisors of any county authorizes the sheriff of such county to operate such a facility or facilities as provided in subsection (1) of this section, any funds which may be derived from the operation of an inmate canteen facility or facilities shall be deposited into a special fund in the county treasury to be designated as the "Inmate Canteen Fund." Any monies in the special fund may be expended solely by the sheriff of the county for any educational related expenses, to purchase equipment and supplies and to provide for maintenance of the equipment purchased for the benefit and welfare of the inmates incarcerated in the county jail. The term "supplies" shall not include supplies related to the personal hygiene of inmates.

(2) In lieu of the authority to operate an inmate canteen facility under subsection (1) of this section, the board of supervisors of any county, in its discretion, may authorize the sheriff to contract with a private company for the provision of commissary services to inmates of the county jail. Money collected from or on behalf of an inmate for the purchase of commissary items shall be deposited to the credit of the inmate into a special fund in the county treasury to be designated as the "Inmate Commissary Trust Fund." Money in the special fund may be expended upon requisition by the sheriff for the purchase and delivery of prepackaged items from the company with which the sheriff has contracted. The sheriff shall adopt rules and regulations for the letting of contracts for commissary services, the collection and distribution of commissary items to inmates, and the items that inmates may purchase through commissary services contracts.

SOURCES: Laws, 1990, ch. 359, § 1; Laws, 1993, ch. 434, § 1; Laws, 1997, ch. 333, § 1; Laws, 2003, ch. 318, § 1, eff from and after July 1, 2003.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-3-81 prohibits expenditure of profits from inmate canteen fund to pay salary of any person. McGee, Feb. 18, 1993, A.G. Op. #92-0970.

Items that county is required to provide do not fall within scope of what may be purchased with inmate canteen funds because such funds may not be used as alternate source of funds for operation and maintenance of jail. Brooks, August 11, 1993, A.G. Op. #93-0526.

Based on Section 19-3-81, any funds generated by a jail canteen may only be spent by the sheriff to purchase equipment and supplies for the inmates. Equipment is not limited to recreational equipment and may include such things as new beds or mattresses. Coon, October 11, 1996, A.G. Op. #96-0696.

Based on Section 19-3-81, any funds generated by a jail canteen may only be spent by the sheriff to purchase equipment and supplies for the inmates. Equipment is not limited to recreational equipment and may include any equipment or supplies except supplies related to the personal hygiene of inmates as specified in the statute. Coon, November 8, 1996, A.G. Op. #96-0696.

Section 19-3-81 does not mandate that the canteen operating in a county jail operate at a profit, however, if there is a profit, then such funds are to be deposited in an Inmate Canteen Fund with the county treasury. Breazeale, December 20, 1996, A.G. Op. #96-0871.

Deductions from inmate's accounts for damaged county property must be accomplished with due process. Prescott, March 27, 1998, A.G. Op. #98-0164.

This section is not authority for a county board of supervisors to directly commit the profits from a inmate canteen fund to a contract for the provision of various programs and treatment services at a jail facility, such as inmate records system, substance abuse treatment program, GED program, chaplaincy and religious services, law library services, recreation program, etc. Webb, June 4, 1999, A.G. Op. #99-0245.

A sheriff may expend canteen funds for any items that benefit the inmates with the exception of personal hygiene supplies; prisoner uniforms and mattresses are not personal hygiene items and therefore may be purchased out of canteen funds. Entrekin, Jan. 28, 2000, A.G. Op. #2000-0034.

Section 19-3-81(1)(b) implies, upon resolution of the board of supervisors, that the sheriff's department is authorized to perform the necessary paperwork for depositing the proceeds from the operation of an "Inmate Canteen Fund" into the county treasury; however, the board of supervisors, as a condition precedent to the establishment of the facility by resolution spread on the minutes, can authorize the county administrator to account for the fund; in any case, the sheriff has sole authority to make expenditures from the fund, in the sound exercise of his discretion and in accordance with the terms of the statute. Davis, Mar. 22, 2002, A.G. Op. #02-0115

Money from the Inmate Canteen Fund may be used to purchase computers and software for use by inmates. Womack, Nov. 22, 2002, A.G. Op. #02-0683.

If a commissary company is charging a sales tax on items provided to inmates, then the sales tax would be deducted from the inmate's account. Howard, Feb. 14, 2003, A.G. Op. #03-0064.

Canteen funds may not be expended for concrete to be poured for an inmate exercise yard. Creekmore, Apr. 7, 2003, A.G. Op. 03-0162.

Inmate canteen funds may be expended for construction of a building for the purpose of providing classroom space for a GED program and alcohol and drug rehab program for the benefit of the inmates. Robinson, Dec. 23, 2004, A.G. Op. 04-0609.

§ 19-3-83. Authority to adopt ordinances for the regulation of transient vendors.

The board of supervisors of any county shall have the power to adopt reasonable ordinances for the regulation of transient vendors not inconsistent with the provisions of Sections 75-85-1 through 75-85-19. However, such board of supervisors shall not have the power to declare residential solicitations by transient vendors who are citizens of the State of Mississippi, or who are agents of corporations domiciled in the State of Mississippi, or who are agents of foreign corporations qualified to do business in the State of Mississippi, to be a public nuisance or a misdemeanor, unless such transient vendors are not in compliance with Sections 75-85-1 through 75-85-19 or local regulations. Before transacting any business all transient vendors shall furnish to the county wherein such business is to be transacted, a good and sufficient penal bond in an amount not to exceed Two Thousand Dollars ($2,000.00) conditioned that if such transient vendor shall comply with all of the provisions of the county ordinances relating to transient vendors such obligation shall be void, otherwise, to remain in full force and effect. Any ordinance adopted by the board of supervisors of any county under the provisions of this section shall be applicable throughout the entire county, including any areas within any municipalities in such county, unless there is in effect or is subsequently adopted by the municipality its own ordinance under the provisions of Section 29-19-35, in which case the municipal ordinance shall control as to the area within such municipality.

SOURCES: Laws, 1994, ch. 522, § 1, eff from and after July 1, 1994.

Cross References — Tax collector's duty to maintain alphabetical list of all transient vendors in the county or municipality and names and addresses of their agents, see § 75-85-11.

County or municipality tax collector to serve as agent for service of process for transient vendor who fails to have or maintain registered agent, see § 75-85-11.

County and municipal tax collectors to issue transient vendor license under Chapter 85, Title 75 under certain circumstances, see § 75-85-15.

ATTORNEY GENERAL OPINIONS

The bond required by Section 75-85-13 is separate and distinct from the bond which may be imposed by either municipalities and/or counties under Sections 21-19-35 and 19-3-83, respectively; i.e., transient vendors must comply with any and all applicable statutes. Weems, July 25, 2006, A.G. Op. 06-0269.

The term "penal bond" in Sections 21-19-35 and 19-3-83 means the same and can be used interchangeably with the more commonly used term "surety" bond. Weems, July 25, 2006, A.G. Op. 06-0269.

RESEARCH REFERENCES

ALR. Validity of municipal regulation of solicitation of magazine subscriptions. 9 A.L.R.2d 728.

Validity of municipal ordinance prohibiting house-to-house soliciting and peddling without invitation. 35 A.L.R.2d 355.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 23, 24, 59, 61, 79.

17 Am. Jur. Pl & Pr Forms (Rev), Markets and Marketing, Forms 2, 6 (Complaint to enjoin enforcement of municipal ordinance restricting peddlers).

CJS. 39A C.J.S., Hawkers and Peddlers §§ 15-18, 23.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 19-3-85. Authority of board to dispose of lost, stolen, abandoned or misplaced personal property.

The board of supervisors of any county, upon the receipt or recovery of any lost, stolen, abandoned or misplaced personal property by the sheriff or other law enforcement officers of the county, shall cause to be posted, in three (3) public places in the county, notice that such property has been received or recovered. Such notice shall contain an accurate and detailed description of such property and, if the board of supervisors is advised as to who owns the property, a copy of the notice shall be mailed to such person or persons in addition to being posted as required in this section. The owner may recover the property by filing a claim with the board of supervisors and establishing his right to the property. The board may require bond of the person claiming the property before delivering it to him. Parties having adverse claims to the property may proceed according to law.

If no person claims the property within one hundred twenty (120) days from the date the notice is given, the board of supervisors shall cause the property to be sold at public auction to the highest bidder for cash after first posting notice of the sale in three (3) public places in the county at least ten (10) days before the date of the sale. The notice shall contain a detailed and accurate description of the property to be sold and shall be addressed to the unknown owners or other persons interested in the property to be sold. The notice shall also set forth the date, time and place the sale is to be conducted and shall designate the sheriff to make the sale.

However, lost, stolen, abandoned or misplaced motor vehicles and bicycles may be sold in the manner provided in the preceding paragraph after the expiration of ninety (90) days from their receipt or recovery by law enforcement officers of the county.

The sheriff, promptly upon completion of the sale, shall deliver to the chancery clerk a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold, and all monies received from such sale. The clerk then shall deposit the monies into the county treasury and the proceeds of the sale shall be first applied to the necessary costs and expenses of the sale, with the remainder to be credited to the special supplemental budget of the sheriff to be expended by the sheriff for any law enforcement purpose upon approval of the board of supervisors. The chancery clerk shall file the information concerning the sale among the other records of his office. If, within ninety (90) days after the date of the sale, any person claims to be the owner of the property sold, the board, upon satisfactory proof of ownership, shall pay to such person the amount for which the property was sold, and the board may require of such person a bond in such cases as the board deems advisable. No action shall be maintained against the county or any of its officers or employees or the purchaser at the sale for any property sold or the proceeds therefrom after the expiration of ninety (90) days from the date of the sales as authorized in this section.

SOURCES: Laws, 2002, ch. 502, § 1, eff from and after July 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The word "of" was changed to "or" so that "upon the receipt of recovery of any personal property" reads "upon the receipt or recovery of any...personal property". The Joint Committee ratified the correction at its June 3, 2003 meeting.

COUNTY COOPERATIVE SERVICE DISTRICT

Sec.

19-3-101. Creation of county cooperative service district.
19-3-103. District as public corporation in perpetuity; powers.
19-3-105. Board of commissioners.
19-3-106. Authority of district to issue revenue bonds.
19-3-107. County terminating participation in district.
19-3-109. Audit of district.
19-3-111. Appropriation of funds.
19-3-113. Levy of tax.
19-3-115. Contractual powers of municipality.

§ 19-3-101. Creation of county cooperative service district.

(1) The board of supervisors of any county in this state may, by order duly entered on its minutes, join with any other county or counties in this state to

establish a county cooperative service district for the purpose of instituting planning and mutual cooperation among counties to improve the delivery of services to, and the provision of benefits for, all citizens of participating counties by the joint financing, construction and administration of governmental services and facilities.

(2) Any power, authority or responsibility which may be lawfully exercised by a county, except for the imposition of taxes, may be exercised jointly by participating counties through the board of commissioners of a county cooperative service district, hereinafter in Sections 19-3-101 through 19-3-115, Mississippi Code of 1972, referred to as the "district," unless in a resolution of a board of supervisors creating the district the exercise of a particular power is specifically excluded. The district shall have authority to prepare or have prepared a water resources study or other environmental studies; however, any action by the district which will have an impact upon groundwater resources shall only be implemented consistent with an official statewide water management plan or with the approval of the Commission on Natural Resources.

SOURCES: Laws, 1989, ch. 519, § 1; Laws, 1990, ch. 556, § 2, eff from and after passage (approved April 4, 1990).

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — State water management plan, see § 51-3-21.

ATTORNEY GENERAL OPINIONS

A county may contract with a county cooperative service district to provide garbage disposal and to bill and collect the fees for the garbage service. The services may be performed for either an annual or monthly fee. Hudson, Oct. 8, 2004, A.G. Op. 04-0480.

§ 19-3-103. District as public corporation in perpetuity; powers.

From and after the creation of a district, it shall be a public corporation in perpetuity under its corporate name and shall, in that name, be a body politic and corporate, with power of perpetual succession, having all the powers necessary or convenient to effectuate the purpose of Sections 19-3-101 through 19-3-115, including the power:

(a) To adopt, and from time to time amend and repeal, bylaws, rules and regulations not inconsistent with Sections 19-3-101 through 19-3-115 to carry into effect the powers and purposes of the district;

(b) To adopt an official name and seal, and retain and keep minutes of its meetings in a firmly bound minute book in which all actions taken by the district about its business shall be recorded;

(c) To elect from among its members a chairman, vice-chairman and secretary to serve annually;

(d) To maintain an office at such place or places as it may designate, and to employ and compensate an executive director and such other personnel as shall be necessary to exercise the powers and perform the duties provided for in Sections 19-3-101 through 19-3-115;

(e) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under Sections 19-3-101 through 19-3-115;

(f) To implement, operate, administer or supervise, directly or indirectly, such programs, services and activities as may be necessary to accomplish the purposes of Sections 19-3-101 through 19-3-115;

(g) To apply for, accept, receive, expend or otherwise dispose of, in furtherance of its functions, funds, grants, services and property from the federal government or its agencies and from departments, agencies and instrumentalities of the state, municipal or county governments;

(h) To cooperate with and execute cooperative agreements with all other federal, state and local governmental agencies in the exercise of its functions under the provisions of Sections 19-3-101 through 19-3-115;

(i) To sue and be sued; and in any suit against the commission, service of process shall be had by service upon the chairman with such process; and

(j) To charge fees, tolls and special assessments to participating counties and any municipality which may have contracted for services to finance the operation, maintenance and debt service of activities and services undertaken by the district.

SOURCES: Laws, 1989, ch. 519, § 2, eff from and after passage (approved April 4, 1989).

§ 19-3-105. Board of commissioners.

(1) The powers of a district shall be vested in and exercised by a board of commissioners consisting of not less than one (1) nor more than five (5) members appointed by the board of supervisors of each participating county. Each commissioner shall be either a member of the board of supervisors or an elected municipal official. Each commissioner shall be appointed and hold office for a term concurrent with the appointing authority. Any vacancy occurring on the board shall be filled by the appointing authority at a regular meeting of the board of supervisors, and unexpired terms shall be filled for the remainder of the term.

(2) Each commissioner shall take and subscribe to the oath of office prescribed in Section 268, Mississippi Constitution of 1890, before the clerk of the appointing board of supervisors that he will faithfully discharge the duties of the office of commissioner, which oath shall be filed with the clerk and by him preserved.

(3) The commissioners so appointed and qualified may be compensated for their services for each meeting of the board of commissioners attended, either regular or special, at the per diem established in Section 25-3-69, Mississippi Code of 1972, and shall be reimbursed for all expenses necessarily incurred in

the discharge of their official duties as provided for state officers and employees in Section 25-3-41, Mississippi Code of 1972.

(4) The board of commissioners may appoint an executive committee, to be composed of not less than one (1) commissioner from each participating county, with a chairman to be designated by the board of commissioners. The executive committee is empowered to execute all powers vested in the full board of commissioners during the interim of the meetings of the board. A majority, plus one (1), of the members of the executive committee shall be a quorum for the transaction of business.

SOURCES: Laws, 1989, ch. 519; Laws, 1990, ch. 556, § 3, eff from and after passage (approved April 4, 1990).

Cross References — Authority of district to issue revenue bonds, see § 19-3-106.

ATTORNEY GENERAL OPINIONS

Board of supervisors, mayors and members of municipal boards of aldermen or commissioners are eligible for appointment and service on board of commissioners of Tricounty Service District by virtue of clear and unambiguous expression of legislature. Thompson, March 30, 1990, A.G. Op. #90-0168.

Members of boards of supervisors and governing authorities of municipalities within service district are eligible for membership on board of commissioners of Tri-County Service District; mayor and alderman are eligible, as they are governing authorities in code charter municipality. Valente, Jan. 24 1990, A.G. Op. #90-0018.

§ 19-3-106. Authority of district to issue revenue bonds.

The board of commissioners of any cooperative service district may, pursuant to a favorable majority vote of the board of supervisors of each participating county, and for good cause shown therefor, authorize the cooperative service district to issue its revenue bonds payable from and secured by a pledge of all or any part of revenues under any contract or contracts it enters into under Sections 19-3-101 through 19-3-115, Mississippi Code of 1972, and/or from the avails of any tax imposed or appropriation made to support the district. The bonds shall not be or constitute an indebtedness of any participating county or municipality within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues derived by the cooperative service district under any contract or contracts it enters into under Section 19-3-101 through 19-3-115, Mississippi Code of 1972, and/or from the avails of any tax imposed or appropriation made to support the district. Neither the full faith and credit nor taxing power of any participating county, municipality, or of the state or any political subdivision thereof, is pledged to the payment of the principal of, the interest on, or premium, if any, of the bonds. Such bonds shall be in such form and denomination as prescribed by the board of commissioners of the district. Such bonds may be serial or term; redeemable, with or without premium, or nonredeemable; registered or coupon bonds with registration privileges as to either principal and interest, principal only, or both; shall bear interest at a rate or rates to be determined pursuant to the sale of the bonds; and shall be payable at such time or times and shall mature at such time or times not exceeding twenty-five (25) years from their date, and at such place or places as shall be prescribed in the bond resolution authorizing their issuance; provided, however, that any bond issue to be awarded and sold to the United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance authorizing their issuance. Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of this subsection shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing resolution. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest rate specified for the same bond issue. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the State of Mississippi. Such bonds shall be sold at public or private sale upon such terms as the board of commissioners of the district may determine, not inconsistent with the provisions of this subsection, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than that allowed in Section 75-17-103, Mississippi Code of 1972, computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

All bonds issued pursuant to this subsection shall be validated as provided in Sections 31-13-1 through 31-13-11, Mississippi Code of 1972.

Proceeds from the sale of bonds issued pursuant to this subsection may be invested, pending their use, in such certificates of deposit as are specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them, and the earnings on such investments applied as provided in such resolution or trust indenture.

All bonds issued pursuant to this subsection are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees and for the sinking fund of municipalities, villages, school districts or any other political corporation or subdivision of the State of Mississippi. Such bonds shall constitute a district indebtedness within the meaning of Section 19-3-107, Mississippi Code of 1972.

SOURCES: Laws, 1990, ch. 556, § 1, eff from and after passage (approved April 4, 1990).

§ 19-3-107. County terminating participation in district.

The operation and management of a district is vested solely in its board of commissioners; however, a participating county may terminate its participation in a district by a majority vote of its board of supervisors, but such board of supervisors shall have no power to terminate its participation until it has paid its pro rata share of any outstanding district indebtedness of any kind.

SOURCES: Laws, 1989, ch. 519, § 4, eff from and after passage (approved April 4, 1989).

Cross References — Revenue bonds issued by district as district indebtedness within meaning of this section, see § 19-3-106.

§ 19-3-109. Audit of district.

A district shall be audited from time to time by the State Auditor pursuant to the provisions of Section 7-7-211, Mississippi Code of 1972.

SOURCES: Laws, 1989, ch. 519, § 5, eff from and after passage (approved April 4, 1989).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 19-3-111. Appropriation of funds.

The board of supervisors of each participating county and the governing authorities of each municipality located therein are authorized and empowered, in their discretion, to appropriate and pay such sums as they deem necessary and desirable, out of any available funds of the county or municipality which are not required for any other purpose, to the district in which the county or municipality is located.

SOURCES: Laws, 1989, ch. 519, § 6, eff from and after passage (approved April 4, 1989).

Cross References — Use of appropriations to pay revenue bonds issued by district, see § 19-3-106.

§ 19-3-113. Levy of tax.

(1) The board of supervisors of any participating county is hereby authorized and empowered, in its discretion, to levy a tax not to exceed one-half (½) mill annually on all taxable property within the county the proceeds of which shall be used to support the district in which the county is located. The proceeds of such tax shall not be included within the ten percent (10%) increase limitation under Section 27-39-321, Mississippi Code of 1972.

(2) In addition to the tax authorized to be imposed in subsection (1) of this section, a participating county may impose special fees, tolls and special assessments for projects or services undertaken by the district in which the county is located in order to defray the expenses of the district related to such projects or services.

SOURCES: Laws, 1989, ch. 519, § 7, eff from and after passage (approved April 4, 1989).

Cross References — Use of funds generated by tax to pay revenue bonds issued by district, see § 19-3-106.

§ 19-3-115. Contractual powers of municipality.

Any municipality located within a cooperative service district may, pursuant to a duly adopted resolution of the governing body, and upon concurrence by the board of commissioners of the service district, enter into contracts with the district to provide, obtain or receive any services provided by the district or to otherwise cooperate and participate through contract in the delivery of services provided by the district which the municipality has the power, authority or responsibility to exercise. In each instance, the contract shall provide the district sufficient payment to enable the district to meet its expenses, including any debt service as a result of any projects of the service district for which the contract is entered.

Any municipality which has contracted with a cooperative service district may terminate its contract with the district by a majority vote of the governing authorities, but the governing authorities of a municipality shall have no power to terminate a contract with the district until the municipality has paid all outstanding debts for the services it has received pursuant to the contract.

SOURCES: Laws, 1989, ch. 519, § 8, eff from and after passage (approved April 4, 1989).

Cross References — Use of funds generated by contracts to pay revenue bonds issued by district, see § 19-3-106.

CHAPTER 4

County Administrator

Sec.	
19-4-1.	Employment, qualifications and general duties.
19-4-3.	Terms of employment; compensation.
19-4-5.	Establishment of administration policies by board.
19-4-7.	Duties and responsibilities.
19-4-9.	Oath and bond.

§ 19-4-1. Employment, qualifications and general duties.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors of any county is authorized, in its discretion, to employ a county administrator. The person employed as county administrator shall hold at least a bachelor's degree from an accredited college or university and shall have knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, personnel management and road construction procedures. Such administrator, under the policies determined by the board of supervisors and subject to said board's general supervision and control, shall administer all county affairs falling under the control of the board and carry out the general policies of the board in conformity with the estimates of expenditures fixed in the annual budget as finally adopted by the board or as thereafter revised by appropriate action of the board.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors of each county shall appoint some person other than a member of such board to serve as county administrator. The board of supervisors may appoint the chancery clerk of the county as county administrator if the chancery clerk agrees to serve as county administrator, or the board may appoint as county administrator some other person who has knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control or personnel management. If the chancery clerk is appointed to serve as county administrator, the board of supervisors, with the approval of the chancery clerk, may appoint the chancery clerk also to serve as the county purchase clerk, an assistant purchase clerk, the inventory control clerk or any combination of such positions, but no chancery clerk who serves as county administrator shall also serve as the county road manager or a receiving clerk or an assistant receiving clerk for the county. If some person other than the chancery clerk is appointed to serve as county administrator, the board of supervisors may appoint such person also to serve as (a) inventory control clerk; (b) inventory control clerk and county road manager; or (c) inventory control clerk and county purchase clerk; but such person shall not serve as both county administrator and as a receiving clerk or an assistant receiving clerk for the county.

Notwithstanding any provisions of this section to the contrary, in any county having a population of less than three thousand (3,000) according to the latest federal decennial census, the board of supervisors, with the approval of the chancery clerk, may appoint the chancery clerk also to serve as the county administrator, the county purchase clerk, an assistant purchase clerk, the receiving clerk, an assistant receiving clerk, and the inventory control clerk, or any combination of such positions.

The county administrator, under the policies determined by the board of supervisors and subject to the board's general supervision and control, shall administer all county affairs falling under the control of the board and carry out the general policies of the board in conformity with the estimates of expenditures fixed in the annual budget as finally adopted by the board or as thereafter revised by appropriate action of the board.

The boards of supervisors of at least two (2) but no more than five (5) counties may, by agreement executed under the Interlocal Cooperation Act of 1974, employ the same person to serve them as county administrator; however, a chancery clerk may not be appointed to serve as administrator for more than one (1) county nor for any county other than the county for which he serves as chancery clerk.

The State Auditor shall prescribe a course of continuing education for county administrators to keep them knowledgeable about their duties and responsibilities with respect to administering the affairs of the county. At least one (1) training session shall be held annually.

SOURCES: Laws, 1974, ch. 486, § 1; Laws, 1988 Ex Sess, ch. 14, § 6, eff from and after October 1, 1989.

Editor's Note — The Interlocal Cooperation Act of 1974 is codified at § 17-13-1 et seq.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Terms of employment of a county administrator appointed under this section, see § 19-4-3.

Application of this section to the prohibition against a county employee holding more than one position as purchase clerk, receiving clerk, or inventory control clerk, see § 31-7-118.

ATTORNEY GENERAL OPINIONS

Section 19-3-81(1)(b) implies, upon resolution of the board of supervisors, that the sheriff's department is authorized to perform the necessary paperwork for depositing the proceeds from the operation of an "Inmate Canteen Fund" into the county treasury; however, the board of supervisors, as a condition precedent to the establishment of the facility by resolution spread on the minutes, can authorize the county administrator to account for the fund; in any case, the sheriff has sole authority to make expenditures from the fund, in the sound exercise of his discretion and in accordance with the terms of the statute. Davis, Mar. 22, 2002, A.G. Op. #02-0115

A member of the board of supervisors cannot be the county administrator. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

Sections 19-4-1 and 19-4-7 permit the board of supervisors to delegate to the county administrator their duty to approve travel by county employees under Section 25-3-41; however, giving advance approval to certain classes of employees, rather than individual employees, to attend unspecified training classes during a particular month or similar time period, does not satisfy the requirements of Section 25-3-41. Nowak, Jan. 6, 2005, A.G. Op. 05-0625.

§ 19-4-3. Terms of employment; compensation.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The county administrator so employed shall hold office at the pleasure of the board of supervisors and his employment may be terminated at any time by a majority vote of the board of supervisors. He shall be paid a salary to be fixed by the board of supervisors which may be paid from the county general fund or from the proceeds of any tax levied by the board of supervisors for the support and maintenance of any unit of county government, excluding schools and hospitals, or from any funds which may be available to defray the financial administration expenses of county government. The board shall provide travel and transportation expense and other office expenses as are needed in the performance of the duties of the office of county administrator. Said travel and transportation expense shall be paid on itemized vouchers in accordance with the provisions of Section 25-3-41, Mississippi Code of 1972.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The person appointed as county administrator under Section 19-4-1 shall serve at the will and pleasure of the board of supervisors and may be removed from such position by a majority vote of the board. The compensation of the county administrator shall be fixed by the board of supervisors and may be paid from the county general fund or from any funds which may be available to defray the financial administration expenses of county government. Any chancery clerk who agrees to also serve as county administrator may be paid, in addition to such compensation as he is otherwise entitled to receive by law, such additional compensation as the board deems him to be entitled commensurate with the additional duties he performs as county administrator. The board shall provide travel and transportation expense and other office expenses as are needed in the performance of the duties of the office of county administrator. Said travel and transportation expense shall be paid on itemized vouchers in accordance with the provisions of Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1974, ch. 486, § 2; Laws, 1988 Ex Sess, ch. 14, § 7, eff from and after October 1, 1989.

ATTORNEY GENERAL OPINIONS

County may not pay basic monthly service bill of privately owned cellular telephone used by county administrator; county may reimburse actual and itemized costs of reasonable and necessary telephone expense incurred as direct requirement of position as county administrator, provided incurring of such expense has been previously authorized. Scipper, Oct. 21, 1992, A.G. Op. #92-0811.

§ 19-4-5. Establishment of administration policies by board.

The board of supervisors by action spread upon the minutes shall establish the general policies to be followed in the administration of the county and the county administrator so employed shall have such duties and responsibilities as set forth in sections 19-4-1 through 19-4-9.

SOURCES: Laws, 1974, ch. 486, § 3, eff from and after passage (approved April 2, 1974).

§ 19-4-7. Duties and responsibilities.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors may delegate and assign to the county administrator the duties and responsibilities enumerated below, in whole or in part, and such other duties and responsibilities as said board may determine, not contrary to the laws of the State of Mississippi or the Constitution thereof and not assigned by law to other officers:

(a) Employ an office clerk and such other technical and secretarial assistance for the board as may be needed, maintain an office for the board and prepare a budget for his office subject to approval of the board;

(b) Prepare an inventory of all personal property owned by the county and the location and condition of such property and shall maintain a perpetual inventory of such property;

(c) List all buildings and real estate owned by the county and keep a perpetual list of such real estate;

(d) Be responsible for carrying out the responsibilities of the board of supervisors in regard to janitorial services and maintenance of buildings and property owned by the county except such as may be specifically assigned by the board of supervisors to some other person or office, or may be the responsibility of some other office under law;

(e) Exercise supervision over the purchase clerk and inventory control clerk of the county, and the boards or other divisions of county government financed in whole or in part through taxes levied on county property and purchases shall be made from vendors whose bids have been accepted by the board of supervisors under the provisions of law or to serve as purchase clerk or inventory control clerk;

(f) Assist the board in the preparation of the budget and preparation of the tax levy;

(g) Have authority to make inquiry of any person or group using county funds appropriated by the board of supervisors as to the use or proper use of such funds and shall report to the board of supervisors as to such findings;

(h) Have general supervision over the county sanitary land fills and refuse collection procedures;

(i) Have general supervision over county-owned parks, playgrounds and recreation areas;

(j) Have general supervision over any and all zoning and building code ordinances adopted by the board of supervisors and shall administer such ordinances;

(k) Have general supervision over any and all airports owned by the county;

(*l*) Be the liaison officer to work with the various divisions of county government and agencies to see that county-owned property is properly managed, maintained, repaired, improved, kept or stored;

(m) See that all orders, resolutions and regulations of the board of supervisors are faithfully executed;

(n) Make reports to the board from time to time concerning the affairs of the county and keep the board fully advised as to the financial condition of the county and future financial needs;

(o) Keep the board of supervisors informed as to federal and state laws and regulations which affect the board of supervisors and the county, shall advise the board as to the possible availability of federal or state grants and assistance for which the county may be eligible, shall assist in the preparation and submission of plans and project specifications necessary to acquire such assistance, and shall be the administrating officer of county grants from state and federal sources;

(p) Be charged with the responsibility of securing insurance coverage on such county property as the board shall decide should be insured and of securing any other insurance required or authorized by law. He shall work out a plan of insurance for the county which will insure minimum premiums;

(q) Receive inquiries and complaints from citizens of the county as to the operation of county government, investigate such inquiries and complaints and shall report his finding to the board and the individual supervisor of the district from which such inquiry or complaint arises;

(r) Meet regularly with the board of supervisors and have full privileges of discussion but no vote;

(s) Do any and all other administrative duties that the board of supervisors could legally do themselves and that they can legally delegate without violating the laws of the state nor impinging upon the duties set out by law for other officers.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors may delegate and assign to the county administrator the duties and responsibilities enumerated below, in whole or in part, and such other duties and responsibilities as said board may determine, not contrary to the laws of the State of Mississippi or the Constitution thereof and not assigned by law to other officers:

(a) Employ an office clerk and such other technical and secretarial assistance for the board as may be needed, maintain an office for the board and prepare a budget for his office subject to approval of the board;

(b) Be responsible for carrying out the policies adopted by the board of supervisors;

(c) Exercise supervision over the boards or other divisions of county government, except for the sheriff's department, financed in whole or in part through taxes levied on county property and purchases shall be made from vendors whose bids have been accepted by the board of supervisors under the provisions of law;

(d) Prepare the budget for consideration by the board of supervisors and assist the board of supervisors in the preparation of the tax levy; however, the sheriff, any governing authority, as defined in Section 31-7-1, funded in whole or in part by the board of supervisors and any board or commission funded in whole or in part by the board of supervisors shall be responsible for preparing their respective budgets for consideration by the board of supervisors;

(e) Make inquiry of any person or group using county funds appropriated by the board of supervisors as to the use or proper use of such funds and shall report to the board of supervisors as to such findings;

(f) Have general supervision over the county sanitary landfills and refuse collection procedures;

(g) Have general supervision over county-owned parks, playgrounds and recreation areas;

(h) Have general supervision over any and all zoning and building code ordinances adopted by the board of supervisors and shall administer such ordinances;

(i) Have general supervision over any and all airports owned by the county;

(j) Be the liaison officer to work with the various divisions of county government and agencies to see that county-owned property is properly managed, maintained, repaired, improved, kept or stored;

(k) See that all orders, resolutions and regulations of the board of supervisors are faithfully executed;

(*l*) Make reports to the board from time to time concerning the affairs of the county and keep the board fully advised as to the financial condition of the county and future financial needs;

(m) Keep the board of supervisors informed as to federal and state laws and regulations which affect the board of supervisors and the county, shall advise the board as to the possible availability of federal or state grants and assistance for which the county may be eligible, shall assist in the preparation and submission of plans and project specifications necessary to acquire such assistance, and shall be the administrating officer of county grants from state and federal sources;

(n) Be charged with the responsibility of securing insurance coverage on such county property as the board shall decide should be insured and of securing any other insurance required or authorized by law. He shall work out a plan of insurance for the county which will ensure minimum premiums;

(o) Receive inquiries and complaints from citizens of the county as to the operation of county government, investigate such inquiries and complaints, and shall report his finding to the board and the individual supervisor of the district from which such inquiry or complaint arises;

(p) Meet regularly with the board of supervisors and have full privileges of discussion but no vote;

(q) Perform any and all other administrative duties that the board of supervisors could legally perform themselves and that they can legally delegate without violating the laws of the state nor impinging upon the duties set out by law for other officers.

SOURCES: Laws, 1974, ch. 486, § 4; Laws, 1988 Ex Sess, ch. 14, § 8, eff from and after October 1, 1989.

JUDICIAL DECISIONS

1. In general.

Court held that a Mississippi county administrator occupied a critical managerial role in county government, and because his duties strongly influenced the public's view of the elected board of supervisors, the board must be assured of his trust and loyalty and must be able to assume the confidentiality, when necessary, of their mutual dealings; thus, the administrator could be discharged for campaigning for board member's political enemy without violating the administrator's constitutional rights. Gentry v. Lowndes County, 337 F.3d 481 (5th Cir. 2003).

ATTORNEY GENERAL OPINIONS

The board of supervisors may operate a county park, including a county golf course which includes a concession stand, either through a county park commission established pursuant to 55-9-81 and following of the Mississippi Code, or under its own supervision, which may be delegated to the county administrator pursuant to Section 19-4-7. Mullins, March 22, 1996, A.G. Op. #96-0127.

Although a county administrator has the authority to hire and terminate those county employees designated by the board of supervisors, there is no statutory authority for an administrator to abolish a personnel position that has been designated by the board. Brooks, Mar. 26, 2004, A.G. Op. 04-0108.

Sections 19-4-1 and 19-4-7 permit the board of supervisors to delegate to the county administrator their duty to approve travel by county employees under Section 25-3-41; however, giving advance approval to certain classes of employees, rather than individual employees, to attend unspecified training classes during a particular month or similar time period, does not satisfy the requirements of Section 25-3-41. Nowak, Jan. 6, 2005, A.G. Op. 05-0625.

RESEARCH REFERENCES

ALR. Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Law Reviews. Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 19-4-9. Oath and bond.

The county administrator shall take the official oath of office and shall give bond to the board of supervisors, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such administrator; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). The bond premiums shall be paid from the county general fund or other available funds of the county.

SOURCES: Laws, 1974, ch. 486, § 5; Laws, 1986, ch. 458, § 16; Laws, 1991, ch. 604, § 3, eff from and after July 1, 1991.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 19-4-9 would stand repealed from and after October 1, 1989. Subsequently, Laws 1986, chapter 458, § 48 was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

ATTORNEY GENERAL OPINIONS

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

CHAPTER 5

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§ 19-5-1. Examination of county jail.

At least annually, and as often as it may think proper, the board of supervisors, or a competent person authorized by the board of supervisors, shall examine into the state and condition of the jail, in regard to its safety, sufficiency and accommodation of the prisoners, and from time to time take such legal measures as may best tend to secure the prisoners against escape, sickness and infection, and have the jail cleansed. If it shall appear from such examination that the sheriff has neglected his duty in the manner of keeping the jail, or keeping and furnishing the prisoners, the board shall fine him, as for a contempt, in any sum not exceeding One Hundred Dollars ($100.00).

The board of supervisors shall not authorize the sheriff or any member of his department to make the inspections required by this section.

SOURCES: Codes, 1857, ch. 59, art 19; 1871, § 1366; 1880, § 2147; 1892, § 310; 1906, § 329; Hemingway's 1917, § 3702; 1930, § 235; 1942, § 2913; Laws, 1986, ch. 315, eff from and after passage (approved March 7, 1986).

Cross References — Remedy against sheriff who permits prisoner to escape, see §§ 11-7-219, 99-19-67.

Requirement that counties erect jails, see § 19-3-41.

Duty of county auditor to keep accounts of jail, see § 19-17-3.

Punishment for escape from county farm, see § 47-1-17.

Penalty for maltreating prisoner by failing to provide food, medical attention, etc., see § 47-1-27.

Aiding escape of prisoners, see § 97-9-31.

JUDICIAL DECISIONS

1. In general.

Statutory duty of supervisors to examine county jail and take appropriate remedial measures brings their acts or omissions within prisoner's 42 USCS § 1983 action to reform conditions in the Jackson County jail, and the trial court was not justified in declaring the supervisors immune without a factual examination. Jones v. Diamond, 519 F.2d 1090 (5th Cir. 1975).

Complaint in federal civil rights action which contained charges that the defendant supervisor, as a board, failed or neglected to discharge the duties prescribed by Code 1972, § 19-5-1 failed to state a cause of action upon which relief could be granted against the individual members of the board of supervisors, and moreover failed to state a claim against the board, as such, since the board is not a "person" within the meaning of 42 USCS § 1983. Cole v. Tuttle, 366 F. Supp. 1252 (N.D. Miss. 1973).

Recovery cannot be had for disinfectants purchased by the sheriff for the county jail, courthouse and poorhouse without authorization. American Disinfecting Co. v. Oktibbeha County, 110 So. 869 (Miss. 1927).

§ 19-5-3. Purchase and upkeep of law enforcement dogs.

The board of supervisors of any county is hereby authorized and empowered to purchase and keep on hand, for the use of the sheriffs, hounds of the best breeding and training. The board, when such hounds have been purchased by them, shall allow out of the general county funds a reasonable sum of money for the purchase of said hounds, and a reasonable amount for the monthly care and maintenance of said hounds. When such hounds have not been purchased the board may allow the sheriff a reasonable amount for hire of hounds in attempting the capture of criminals charged with capital crimes.

Likewise the board of supervisors of any county in the state is hereby authorized and empowered to purchase by negotiation or otherwise, any breed of dogs suitable for law enforcement purposes and pay for same out of the general fund of the county. Said law enforcement dogs may be furnished to the sheriff of said county or to any other law enforcement officer to be used by him or them in the enforcement of the laws in said county. The board of supervisors may also appropriate and pay monthly such amounts as may be necessary to care for and maintain said law enforcement dogs.

SOURCES: Codes, 1906, § 330; Hemingway's 1917, § 3703; 1930, § 236; 1942, § 2914; Laws, 1896, ch. 139; Laws, 1962, ch. 244, eff from and after passage (approved May 1, 1962).

Cross References — Maintenance and training of dogs by sheriff, see § 19-25-83.
Purchase of dogs for use by municipal police department, see § 21-21-5.
Retention by officers of assigned dogs retired from service see § 45-3-52.

RESEARCH REFERENCES

ALR. Liability, under 42 USCA § 1983, for injury inflicted by dogs under control or direction of police. 102 A.L.R. Fed. 616.

§ 19-5-5. Acquisition and operation of radio stations for law enforcement.

The board of supervisors of any county is hereby authorized and empowered, in its discretion, to purchase the necessary and suitable equipment required to install a complete radio base station, including mobile units to be installed in cars and motor boats, after having legally advertised for same as required by law, and to maintain the same and to make such necessary repairs and to purchase replacements and parts so as to keep the same in good order as may be necessary for the efficient operation of said station. The said radio station shall be operated by the sheriffs of said counties for law enforcement purposes. All of the expenses of said station may be borne by any available funds of said counties, including its general fund. However the board of supervisors of any county is hereby authorized and empowered, in its discretion, to purchase new or used two-way shortwave equipment without first advertising for same as required by law, provided the total cost of said two-way shortwave equipment shall not exceed the sum of Five Hundred Dollars ($500.00).

Any county may cooperate with one or more counties in purchasing and maintaining the radio base station herein authorized, and in such event, the cost may be prorated among them by contract.

Any county may cooperate with any municipality located in said county in purchasing and maintaining the radio base station herein authorized, and in such event, the cost may be prorated between said county and municipality by contract. Said county and municipality may employ such dispatcher or dispatchers as in their opinion may be necessary to operate such radio base station.

SOURCES: Codes, 1942, § 2914.5; Laws, 1964, ch. 279, § 1, eff date June 3, 1964.

Cross References — Purchase of radio equipment for county patrolmen, see § 45-7-25.

ATTORNEY GENERAL OPINIONS

Dispatchers hired under Section 19-5-5 would be supervised and directed as agreed upon by the county and municipality. Both the county and the municipality must consent to the employment of such radio dispatchers. Keenum, December 6, 1996, A.G. Op. #96-0841.

§ 19-5-7. Employment of school crossing guards.

The board of supervisors of (a) any county in this state having a population in excess of two hundred fifty thousand (250,000) according to the 1990 federal census, and an assessed valuation in excess of Three Hundred Million Dollars ($300,000,000.00) as shown by the last completed assessment for taxation, and (b) any county in this state having a population of at least thirty-eight thousand (38,000), according to the latest federal decennial census, having one (1) completely constructed highway bridge and an additional highway bridge at least fifty percent (50%) constructed which cross the Mississippi River resulting in a high volume of vehicular traffic in the county, and which has only one (1) public school district in the county, shall be authorized, in its discretion, to employ school crossing guards.

The board of supervisors of the county described in "(a)" above may pay each of the guards employed by it a monthly amount to be established by the board of supervisors, and the board of supervisors of the county described in "(b)" above may pay each of the guards employed by it an amount not to exceed Three Hundred Fifty Dollars ($350.00) per month. Any such board may purchase and furnish the school crossing guards with suitable uniforms.

The board of supervisors of any county which employs school crossing guards under the authority of this section shall annually spread upon its official minutes the total number of school crossing guards employed by the county, including the names of and compensation paid to each of such school crossing guards.

SOURCES: Codes, 1942, § 2988.3; Laws, 1971, ch. 435, §§ 1 and 2; Laws, 1973, ch. 491, § 1; Laws, 1981, ch. 352, § 1; Laws, 1987, ch. 501; Laws, 1999, ch. 319, § 1, eff from and after Oct. 1, 1999.

ATTORNEY GENERAL OPINIONS

In order for the board of supervisors to utilize rubbish landfill funds to repair a county road, the board must first make a factual determination that the work performed on the above county road is necessary to ensure the continued operation of the rubbish landfill. If this factual determination is made, the board has the authority to utilize rubbish landfill funds to maintain and repair a county road that leads to the landfill. Crow, July 6, 2004, A.G. Op. 04-0213.

§ 19-5-9. Adoption of building and other related codes in certain counties.

The construction codes published by a nationally recognized code group which sets minimum standards and has the proper provisions to maintain up-to-date amendments are adopted as minimum standard guides for building, plumbing, electrical, gas, sanitary, and other related codes in Mississippi. Any county within the State of Mississippi, in the discretion of the board of supervisors, may adopt building codes, plumbing codes, electrical codes, sanitary codes, or other related codes dealing with general public health, safety or welfare, or a combination of the same, within but not exceeding the provisions of the construction codes published by nationally recognized code groups, by order or resolution in the manner prescribed in this section, but those codes so adopted shall apply only to the unincorporated areas of the county. However, those codes shall not apply to the erection, maintenance, repair or extension of farm buildings or farm structures, except as may be required under the terms of the "Flood Disaster Protection Act of 1973, " and shall apply to a master planned community as defined in Section 19-5-10 only to the extent allowed in Section 19-5-10. The provisions of this section shall not be construed to authorize the adoption of any code which applies to the installation, repair or maintenance of electric wires, pipelines, apparatus, equipment or devices by or for a utility rendering public utility services, required by it to be utilized in the rendition of its duly authorized service to the public. Before any such code shall be adopted, it shall be either printed or typewritten and shall be presented in pamphlet form to the board of supervisors at a regular meeting. The order or resolution adopting the code shall not set out the code in full, but shall merely identify the same. The vote or passage of the order or resolution shall be the same as on any other order or resolution. After its adoption, the code or codes shall be certified to by the president and clerk of the board of supervisors and shall be filed as a permanent record in the office of the clerk who shall not be required to transcribe and record the same in the minute book as other orders and resolutions.

If the board of supervisors of any county adopts or has adopted construction codes which do not have proper provisions to maintain up-to-date amendments, specifications in such codes for cements used in portland cement concrete shall be superseded by nationally recognized specifications referenced in any code adopted by the Mississippi Building Code Council.

All provisions of this section shall apply to amendments and revisions of the codes mentioned in this section. The provisions of this section shall be in addition and supplemental to any existing laws authorizing the adoption, amendment or revision of county orders, resolutions or codes.

Any code adopted under the provisions of this section shall not be in operation or force until sixty (60) days have elapsed from the adoption of same; however, any code adopted for the immediate preservation of the public health, safety and general welfare may be effective from and after its adoption by a unanimous vote of the members of the board. Within five (5) days after the adoption or passage of an order or resolution adopting that code or codes the clerk of the board of supervisors shall publish in a legal newspaper published in the county the full text of the order or resolution adopting and approving the code, and the publication shall be inserted at least three (3) times, and shall be completed within thirty (30) days after the passage of the order or resolution.

Any person or persons objecting to the code or codes may object in writing to the provisions of the code or codes within sixty (60) days after the passage of the order or resolution approving same, and if the board of supervisors adjudicates that ten percent (10%) or more of the qualified electors residing in the affected unincorporated areas of the county have objected in writing to the code or codes, then in such event the code shall be inoperative and not in effect unless adopted for the immediate preservation of the public health, safety and general welfare until approved by a special election called by the board of supervisors as other special elections are called and conducted by the election commissioners of the county as other special elections are conducted, the special election to be participated in by all the qualified electors of the county residing in the unincorporated areas of the county. If the voters approve the code or codes in the special election it shall be in force and in operation thereafter until amended or modified as provided in this section. If the majority of the qualified electors voting in the special election vote against the code or codes, then, in such event, the code or codes shall be void and of no force and effect, and no other code or codes dealing with that subject shall be adopted under the provisions of this section until at least two (2) years thereafter.

After any such code shall take effect the board of supervisors is authorized to employ such directors and other personnel as the board, in its discretion, deems necessary and to expend general county funds or any other funds available to the board to fulfill the purposes of this section.

For the purpose of promoting health, safety, morals or the general welfare of the community, the governing authority of any municipality, and, with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, is empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density or population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required except as may be required under the terms of the "Flood Disaster Protection Act of 1973" for the erection, maintenance, repair or extension of farm buildings or farm structures outside the corporate limits of municipalities.

The authority granted in this section is cumulative and supplemental to any other authority granted by law.

Notwithstanding any provision of this section to the contrary, any code adopted by a county before or after April 12, 2001, is subject to the provisions of Section 41-26-14(10).

Notwithstanding any provision of this section to the contrary, the Boards of Supervisors of Jackson, Harrison, Hancock, Stone and Pearl River Counties shall enforce the requirements imposed under Section 17-2-1 as provided in such section.

SOURCES: Codes, 1942, §§ 2890.7, 2890.8; Laws, 1962, ch. 266, §§ 1, 2; Laws, 1964, ch. 274; Laws, 1974, ch. 530; Laws, 2000, ch. 590, § 3; Laws, 2001, ch. 587, § 2; Laws, 2006, ch. 541, § 6; Laws, 2008, ch. 379, § 1, eff from and after passage (approved Mar. 31, 2008.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the last paragraph of this section. The words "before or after the effective date of House Bill No. 962, 2001 Regular Session" were changed to "before or after April 12, 2001". The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Master planned communities, see § 19-5-10.

Adoption of building and other related codes by municipalities, see § 21-19-25.

Immunity of agricultural operations from nuisance actions, see § 95-3-29.

Federal Aspects — The Flood Disaster Protection Act of 1973 is codified generally at 42 USCS §§ 4001 et seq.

ATTORNEY GENERAL OPINIONS

For the abatement of public health nuisances, a county may proceed under § 19-5-105, pertaining to the cleaning of private property, or notify the state board of health of the nuisance pursuant to § 41-23-13, and the county may consider passing an ordinance pursuant to this section. Fillingane, Oct. 25, 2002, A.G. Op. #02-0586.

A county is authorized to enter into a contract with a private water association whereby the county will contribute to the construction cost of the association's water well in return for a guaranty of the provision of a certain amount of water from that well. Dabbs, Jan. 9, 2004, A.G. Op. 03-0707.

When the Governor signed House Bill 1406 (Laws of 2006, Ch. 541), the provisions of Section 1 of HB 1406 (§ 17-2-1) became effective, and 30 days thereafter, Pearl River County was required to enforce on an emergency basis, by legislative mandate, the 2003 International Residential Code and the 2003 International Building Code as provided in Section 1 of HB 1406. Thus, the enactment of HB 1406 had the effect of superceding the county's adoption of the international codes. Cummings, Sept. 29, 2006, A.G. Op. 06-0436.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings §§ 19 et seq.

§ 19-5-10. Authority to enter into development agreements for master planned communities; "master planned community" defined; modification of master plan; "dwelling unit" defined.

(1) The board of supervisors of any county is authorized to enter into one or more development agreements with the developer or developers of a master planned community in order to authorize, in addition to any other matters to which the board of supervisors may lawfully obligate the county, the master planned community, through a community self-governing entity created by the owners of the property, to administer, manage and enforce the land use restrictions and covenants, land use regulations, subdivision regulations, building codes and regulations, and any other limitations and restrictions on land and buildings provided in the master plan for the master planned community, in lieu of the real estate and property owners within the master planned community being subject to the county ordinances and regulations pertaining to buildings, subdivisions, zoning, the county's comprehensive plan, and any other county ordinances and regulations pertaining thereto. Prior to entering into any such development agreement, the board of supervisors shall review the master plan for the master planned community and find that the provisions of the master plan providing for regulations, restrictions, covenants and limitations pertaining to building, subdivisions, zoning and comprehensive planning shall be comparable to, or greater than, similar provisions in the ordinances and regulations of the county. The term of such a development agreement may be not more than thirty (30) years or the number of years allowed in the county's subdivision ordinance for terms of subdivision covenants, whichever is greater. The development agreement shall have attached to it a boundary survey made by a registered land surveyor, and upon approval of the development agreement by the board of supervisors, the boundary survey shall be recorded in the land records of the chancery clerk of the county. The recorded boundary survey shall serve as the description of the property within the master planned community which shall not be subject to the county's zoning map, and the county's zoning map shall simply recognize the territory described in such boundary survey as a "master planned community." Whenever there may be a conflict between the county ordinances and regulations pertaining to buildings, subdivisions, zoning, the county's comprehensive plan, and any other county ordinances and regulations pertaining thereto, and the provisions of such a development agreement, including the provisions of the master plan providing for regulations, restrictions, covenants and limitations pertaining to buildings, subdivisions, zoning and comprehensive planning, the provisions of the development agreement shall prevail if the provisions of the development agreement are comparable to or greater than similar provisions of county ordinances and regulations.

(2) As used in this section, the term "master planned community" means a development by one or more developers of real estate consisting of residential, commercial, educational, health care, open space and recreational com-

ponents that is developed pursuant to a long range, multi-phase master plan providing comprehensive land use planning and staged implementation and development and the master plan must include the following minimum provisions:

(a) The real estate described in the master plan must consist of not less than two thousand five hundred (2,500) acres. The master plan may require that not less than fifty percent (50%) of the total dwelling units planned for such acreage must be:

(i) Dwelling units within a certified retirement community certified by the Mississippi Development Authority; or

(ii) Dwelling units where at least one (1) occupant:

1. Is sixty-two (62) years of age; or

2. Receives pension income reported on his or her most recent federal income tax return filed prior to occupancy; or

3. Declares himself to be retired.

(b) The real estate described in the master plan must be subjected to a set of land use restrictions imposed by deed restriction or restrictive covenants recorded by the developer in the land records of the chancery clerk of the county as land is developed and sold in phases to users. Such restrictions shall include design guidelines and standards that provide for:

(i) Internal community self-governance by the owners of the property;

(ii) The establishment of one or more legal persons endowed with the powers, rights and duties to administer, manage, own and maintain common areas, establish community activities and enforce the land use restrictions on the common areas and private property; and

(iii) The establishment of assessments and lien rights to fund amenities, services and maintenance of common areas.

(c) The real estate described in the master plan must be within the territorial boundaries of one or more public utility districts established by the county for the provision of water and sewer facilities and water and sewer services.

(3) The master plan for a master planned community shall be subject to modification from time to time by the original owner or owners of the real estate described in the initial master plan, its affiliates, successors or assigns to meet changing economic and market conditions; provided, however, any such modifications in the master plan which materially change the regulations, restrictions, covenants and limitations pertaining to buildings, subdivisions and land use regulations approved in the development agreement, or which significantly change the overall plan concept, shall be subject to, and shall not take effect until, approved by the board of supervisors of the county.

(4) As used in this section, the term “dwelling unit” means single-family residences, apartments or other units within a multi-family residence, or a room or apartment in a nursing home or congregate-care facility.

SOURCES: Laws, 2000, ch. 590, § 1; Laws, 2012, ch. 396, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "consist of not less than two thousand five hundred (2,500) acres" for "consist of at least three thousand five hundred (3,500) acres" in the introductory paragraph of (2)(a); substituted "Mississippi Development Authority" for "Mississippi Department of Economic and Community Development" in (2)(a)(i); and redesignated (2)(a)(ii)A through C as (2)(a)(ii)1 through 3.

Cross References — Adoption of building and other related codes in certain counties, see § 19-5-9.

§ 19-5-11. Compensation for destruction of certain diseased livestock.

The board of supervisors of any county may, in their discretion, pay to the owner compensation not exceeding the value of any farcied or glandered stock killed heretofore by the sheriff under the provisions of law.

SOURCES: Codes, 1906, § 399; Hemingway's 1917, § 3776; 1930, § 264; 1942, § 2949; Laws, 1906, ch. 122.

Cross References — How claims for damage for death or injury of livestock shall be proved and paid, see § 19-13-49.

Compensation for livestock destroyed by the state livestock sanitary board, see § 69-15-113.

Penalty for failure to destroy or report animals with glanders or farcy, see § 97-27-7.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals § 38.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21-26 (destruction of diseased animals).

37 Am. Jur. Proof of Facts 2d 639, Damages for Loss of or Injury to Animal.

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS. 39A C.J.S., Health and Environment §§ 32-34.

§ 19-5-13. Compensation for cattle killed or injured in dipping process.

Any person in any county in this state shall be entitled to recover from such county reasonable compensation for any livestock owned by such person that may be killed or permanently injured in the process of dipping or as a result of such dipping for the eradication of the cattle tick, where such dipping was done under the supervision of the board of supervisors or the livestock sanitary board.

SOURCES: Codes, Hemingway's 1921 Supp. § 3807a; Laws, 1930, § 265; Laws, 1942, § 2950; Laws, 1917, ch. 38.

Cross References — Compensation for livestock destroyed by the state livestock sanitary board, see § 69-15-113.

JUDICIAL DECISIONS

1. In general.

In statutory action against county for death of cattle from dipping, owner's opinion that cattle died from pneumonia caused by dipping, based on owner's knowledge and experience and observation, held admissible although he did not qualify as an expert. Jackson County v. Meaut, 181 Miss. 282, 179 So. 343 (1938).

The legislature may impose liability upon a county for property injured by dipping for eradication of cattle tick. Simpson County v. Ball, 160 Miss. 241, 134 So. 162 (1931).

A property owner may sue the county for value of livestock injured through dipping for eradication of cattle tick, though the supervisors took no part in dipping. Simpson County v. Ball, 160 Miss. 241, 134 So. 162 (1931).

Possibility that livestock dipped for eradication of cattle tick might die did not prevent enforcement of regulation. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

This statute is in derogation of the common law and entitled to a strict construction, and in case of an ox being killed while lassoed and tangled in the rope preparatory to dipping him there can be no recovery from the county. Franklin County v. Middleton, 140 Miss. 423, 105 So. 856 (1925).

Where the owner of the cattle did his own dipping and the injury resulted from his negligence there can be no recovery from the county. Pippin v. Clarke County, 124 Miss. 728, 87 So. 283 (1921).

For definition of the word "dipping," see Covington County v. Pickering, 123 Miss. 20, 85 So. 114 (1920).

Where a mare has merely been rubbed or sponged with a poisonous fluid used in tick eradication there can be no recovery for damages as there was no dipping. Covington County v. Pickering, 123 Miss. 20, 85 So. 114 (1920).

Where plaintiff presented his claim to the board for damages for the death of a colt dipped and the board allowed a part of it, and there was no appeal from the order of the board, the action of the board was final and plaintiff could not maintain a suit in the circuit court for the full amount. George County v. Bufkin, 117 Miss. 844, 78 So. 781 (1918).

ATTORNEY GENERAL OPINIONS

The purchase and installation of outdoor warning sirens does not fall within the statutorily prescribed uses for excess E-911 funds. Fisher, Mar. 28, 2003, A.G. Op. #03-0105.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals § 38.

37 Am. Jur. Proof of Facts 2d 639, Damages for Loss of or Injury to Animal.

CJS. 39A C.J.S., Health and Environment §§ 32-34.

§ 19-5-15. Burial of livestock dying as result of epidemic; burial of poultry dying as result of natural or man-made disaster or emergency situation.

(1) The board of supervisors of any county is authorized to use the road equipment and employees of the county to bury livestock which died as a result of an epidemic, whenever any licensed veterinarian shall certify to the board or any member thereof that there is an epidemic, contagious disease, among the livestock of the county or any portion of the county and immediate burial is necessary in order to prevent the spread of a contagious disease and would be

in the best interest of the community wherein livestock have contracted such disease.

(2)(a) If a concentrated animal feeding operation contains at least ten thousand (10,000) heads of poultry per house, the board of supervisors of any county may use the road equipment and employees of the county to bury the poultry that has died as the result of a natural or man-made disaster or other emergency situation;

(b) The board shall spread upon its minutes an order declaring that it will be the policy of the board to bury such poultry as authorized by this section;

(c) Any poultry buried under this section shall be buried according to the requirements and regulations of the Mississippi Board of Animal Health;

(d) Before the county buries poultry, the owner shall give written permission and execute a release and waiver of liability to the county for any loss or damages that may result from the burying of the poultry.

(3) Any livestock or poultry buried under this section shall be buried on the premises of the owner of the livestock or poultry, the property provided by the owner, or an approved site.

SOURCES: Codes, 1942, § 2951.5; Laws, 1964, ch. 222; Laws, 2011, ch. 528, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote (1); and added (2) and (3).

ATTORNEY GENERAL OPINIONS

This statute allows counties to bury dead livestock only where the livestock has died as a result of an epidemic. Gamble, Feb. 27, 2004, A.G. Op. 04-0052.

§ 19-5-17. Establishment and maintenance of rubbish and garbage disposal systems; civil action for recovery of delinquent fees and charges.

After December 31, 1992, the board of supervisors of any county in the state shall provide for the collection and disposal of garbage and the disposal of rubbish, and for that purpose is required to establish, operate and maintain a garbage and/or rubbish disposal system or systems; to acquire property, real or personal, by contract, gift or purchase, necessary or proper for the maintenance and operation of such system; to make all necessary rules and regulations for the collection and disposal of garbage and/or rubbish and, if it so desires, to establish, maintain and collect rates, fees and charges for collecting and disposing of such garbage and/or rubbish; and, in its discretion, to enter into contracts, in the manner required by law, with individuals, associations or corporations for the establishment, operation and maintenance of a garbage and rubbish disposal system or systems, and/or to enter into contracts on such terms as the board of supervisors thinks proper with any municipality, other county or region, enabling the county to use jointly with such municipality, other county or region any collection system, authorized rubbish landfill or permitted sanitary landfill operated by the municipality, other county or region. The board of supervisors shall designate by order the area to be served by the system. All persons in the county generating garbage shall utilize a garbage collection and disposal system. However, this provision shall not prohibit any person from managing solid waste generated by such person in any municipal solid waste management facility owned by the generator.

As a necessary incident to such county's power and authority to establish, maintain and collect such rates, fees and charges for collecting and disposing of such garbage and/or rubbish, and as a necessary incident to such county's power and authority to establish, operate and maintain a garbage and/or rubbish disposal system or systems, the board of supervisors of such county shall have the authority to initiate a civil action to recover any delinquent fees and charges for collecting and disposing of such garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, in the event any person, firm or corporation, including any municipal corporation, shall fail or refuse to pay such fees and charges for collecting and disposing of garbage and/or rubbish; provided that such board of supervisors may initiate such a civil action to recover such delinquent fees and charges whether or not such county has previously entered into a contract with such individual, firm or corporation, including a municipal corporation, relating to the establishment, operation and maintenance of such garbage and/or rubbish disposal system or systems; provided, further, that in a civil action to recover such delinquent fees and charges for collecting and disposing of such garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, the county shall in all respects be a proper party to such suit as plaintiff and shall have the power to sue for and recover such unpaid fees and charges and all administrative and legal costs associated with collecting such fees and charges, from any person, firm or corporation, including a municipal corporation, as may fail, refuse or default in the payment of such fees and charges.

SOURCES: Codes, 1942, § 2912.7; Laws, 1966, ch. 306, § 1; Laws, 1973, ch. 446, § 2; Laws, 1983, ch. 495; Laws, 1991, ch. 581, § 27; Laws, 1992, ch. 583 § 12, eff from and after passage (approved May 15, 1992).

Cross References — Garbage disposal systems in counties having military camps therein, see § 17-5-3.

Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

Participation by counties in regional solid waste disposal and recovery systems, see § 17-17-33.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Billing system for collection of costs of operation of systems, see § 19-5-18.

Means of defraying cost of establishing and operating system provided for in this section, see § 19-5-21.

Authority of county to issue bonds to fund establishment of rubbish and garbage disposal systems, see § 19-9-1.

Authority of municipality or board of supervisors to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

JUDICIAL DECISIONS

1. In general.
2. Application.

1. In general.

Property owners who generated garbage and disposed of it themselves on their own property remained under a legal obligation to pay the garbage disposal fees assessed by the county in which they resided. Rogers v. Oktibbeha County Bd. of Supervisors, 749 So. 2d 966 (Miss. 1999).

2. Application.

County could not characterize a debtor's obligation for garbage collection services as an ad valorem tax under Miss. Code Ann. § 19-5-21 because the county had not issued an order that indicated that the monthly collection payment was an ad valorem tax. The county had instead authorized the collection of a monthly fee, pursuant to Miss. Code Ann. § 19-5-17, which was not subject to priority treatment as a bankruptcy claim under 11 U.S.C.S. § 507. In re Mitchell, 398 B.R. 557 (Bankr. N.D. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Tax collector is not statutorily required to collect garbage fees imposed by board of supervisors but may by agreement with board of supervisors collect garbage fees for county garbage system established pursuant to this section. McLaurin, Oct. 21, 1992, A.G. Op. #92-0798.

If garbage fee is set pursuant to Section 19-5-17 rather than imposed as surcharge on ad valorem taxes under Section 19-5-21, tax collector is not statutorily required to collect garbage fees but may in his discretion collect them under authority given to board of supervisors to collect garbage fees. McLaurin, Nov. 4, 1992, A.G. Op. #92-0855.

County may, under current law, collect millage and fees to defray costs of operating solid waste collection and disposal system. Hemphill Nov. 3, 1993, A.G. Op. #93-0588.

Under Section 17-5-3, if a County is the home to either a national guard camp, in whole or in part, an army training camp, army air base or artillery range, then the County does possess the power of eminent domain to secure real property for the purpose of solid waste management; otherwise, it does not. See also Sections 19-5-17 and 17-5-5. Ainsworth, May 10, 1995, A.G. Op. #95-0118.

Under Section 19-5-17, money from the solid waste fund may be used to pay for work performed on solid waste equipment. If the work is performed by a county employee, the money should not be paid directly to the county worker, but should be paid to the general fund from which the county worker is paid. Hemphill, June 28, 1995, A.G. Op. #95-0296.

A garbage fee would be considered a tax and therefore not dischargeable in bankruptcy for each single family residential generator of garbage since the fee is mandatory and not consented to by the generator. See Sections 19-5-17 and 19-5-21(2). Walley, August 14, 1995, A.G. Op. #95-0323.

Any motor vehicle owned by a person who is delinquent in the payment of garbage fees is subject to distraint for nonpayment of those fees; while payment of the fees is a prerequisite to the issuance of a car tag, if the tag is issued in error, it cannot be voided nor can the vehicle be subjected to distraint; however, the county may either sue the individual in justice court or place a lien on the individual's property. Allen, January 30, 1998, A.G. Op. #97-0787.

Counties are empowered to file eminent domain proceedings for the public purpose of acquiring land for the county to establish a landfill; a county may thereafter lease, but may not sell, the land to an individual or private entity for the purpose of establishing and operating a landfill under the applicable statutes for the disposal of county property. Meadows, Feb. 25, 2000, A.G. Op. #2000-0087.

A county board of supervisors may not pick up and dispose of household rubbish within the municipal boundaries of a city without the consent of the municipality. Entrekin, Feb. 18, 2000, A.G. Op. #2000-0059.

A person may dispose of solid waste from his own household upon his own land only if he is a single-family generator and the county board of supervisors has so authorized; any person disposing of solid waste on his own land must nevertheless comply with all state and federal laws, rules and regulations governing such disposal. Caughman, March 10, 2000, A.G. Op. #99-0194.

A county may contract with a county cooperative service district to provide garbage disposal and to bill and collect the fees for the garbage service. The services may be performed for either an annual or monthly fee. Hudson, Oct. 8, 2004, A.G. Op. 04-0480.

Disallowing a property tax homestead exemption for failure to pay delinquent garbage bills constitutes an increase in taxes not authorized in statute, and therefore is prohibited by Miss. Code Ann. § 19-3-40(2)(a). Burgoon, March 2, 2007, A.G. Op. #07-00060, 2007 Miss. AG LEXIS 86.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 398-403 et seq.

§ 19-5-18. Development of billing and collection system.

(1) To defray the cost of establishing, operating and maintaining the system provided for in Section 19-5-17, the board of supervisors may develop a system for the billing and/or the collection of any fees or charges imposed on each person furnished garbage and/or rubbish collection and/or disposal service by the county or at the expense of the county. The board of supervisors may designate, by resolution, a county official to collect the fees or charges. If the board of supervisors designates an elected county official to collect the fees or charges, the board of supervisors shall pay the reasonable costs incurred in collecting the fees or charges. The county official so designated shall notify the board of supervisors monthly of any unpaid fees or charges assessed under Section 19-5-21. The sheriff of the county, in accordance with the performance of his regular duties, shall assist in the collection of any delinquent fees or charges.

(2) The board of supervisors may enter into a contract upon mutual agreement with a public or private corporation, nonprofit corporation, planning and development district or a public agency, association, utility or utility district within the county and/or the area receiving garbage and/or rubbish collection and/or disposal services from the county for the purpose of developing, maintaining, operating and administering a system for the billing and/or collection of fees or charges imposed by the county for garbage and/or rubbish collection and/or disposal services. The entity with whom the board of supervisors contracts shall notify the board of supervisors monthly of any unpaid fees or charges assessed under Section 19-5-21. Any entity that contracts to provide a service to customers, within the area being served by the county's garbage and/or rubbish collection and/or disposal system, may provide a list of its customers to the board of supervisors upon the request of the board.

SOURCES: Laws, 1991, ch. 581, § 29; Laws, 1994, ch. 624, § 3, eff from and after July 1, 1994.

ATTORNEY GENERAL OPINIONS

Collection procedure set forth in statute is available to county notwithstanding fact that county contracted with private company to handle billing. Sherard, July 13, 1993, A.G. Op. #93-0282.

The elected official who is designated pursuant to the statute makes the decisions regarding the collection of garbage fees, and the board of supervisors pays the additional reasonable costs. Shannon, December 18, 1998, A.G. Op. #98-0761.

When a county contracts its solid waste accounts out to a private individual for billing and collecting purposes, the accounts and all the information contained therein are the property of the county and not the person with whom it contracted. Doss, Apr. 12, 2002, A.G. Op. #02-0170.

A county may contract with a county cooperative service district to provide garbage disposal and to bill and collect the fees for the garbage service. The services may be performed for either an annual or monthly fee. Hudson, Oct. 8, 2004, A.G. Op. 04-0480.

If a board of supervisors designates, by resolution, the tax collector to collect and hold delinquent garbage collection charges and/or fees, the board shall pay any reasonable expenses incurred by the tax collector in collecting and securing those amounts, provided that the tax collector's salary shall not be increased by any such payments. Dowdy, Mar. 11, 2005, A.G. Op. 05-0086.

§ 19-5-19. Authority of counties to grant tax exemptions for property surrounding certain public landfills; credit against services received from regional authority in amount of tax revenues lost.

(1) Any county which locates, develops, owns or operates a municipal solid waste management facility within the county, or any county within which is located or developed a municipal solid waste management facility that is part of a local nonhazardous solid waste management plan approved by the Commission on Environmental Quality in accordance with Section 17-17-227, on its own behalf or as a member of a regional authority, is authorized to grant a tax abatement or exception from ad valorem taxation in an amount not to exceed fifty percent (50%) of the tax amended and levied against the real property located directly adjacent and surrounding the site of such facility or such other property within are made of the site which is determined by the board of supervisors to be impacted by the location and operation of the site.

(2) Any county, which is a member of a regional authority, and which grants the tax exemption authorized herein for a municipal solid waste management facility site of the regional authority, shall receive a credit against services received from the regional authority in an amount commensurate with the tax revenue lost as a result of tax exemptions granted pursuant to this section.

SOURCES: Laws, 1992, ch. 583 § 17, eff from and after passage (approved May 15, 1992).

Editor's Note — A former § 19-5-19 (Codes, 1942, §§ 2912.7-01, 2912.7-04; Laws, 1971, ch. 370, §§ 1, 4; Repealed by Laws, 1991, ch. 581, § 34) provided additional authority for the establishment and operation of garbage and rubbish disposal. For similar provisions, see §§ 17-17-301 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 398-403 et seq.

§ 19-5-21. Levy of ad valorem taxes and surcharges for payment of costs of establishment and operation of garbage and rubbish disposal systems; borrowing in anticipation of surcharge levy; use of special funds.

(1)(a) Except as provided in paragraphs (b), (c), (d) and (g) of this subsection, the board of supervisors, to defray the cost of establishing and operating the system provided for in Section 19-5-17, may levy an ad valorem tax not to exceed four (4) mills on all taxable property within the area served by the county garbage or rubbish collection or disposal system. The service area may be comprised of unincorporated or incorporated areas of the county or both; however, no property shall be subject to this levy unless that property is within an area served by a county's garbage or rubbish collection or disposal system.

(b) The board of supervisors of any county wherein Mississippi Highways 35 and 16 intersect and having a land area of five hundred eighty-six (586) square miles may levy, in its discretion, for the purposes of establishing, operating and maintaining a garbage or rubbish collection or disposal system, an ad valorem tax not to exceed six (6) mills on all taxable property within the area served by the system as set out in paragraph (a) of this subsection.

(c) The board of supervisors of any county bordering on the Mississippi River and traversed by U.S. Highway 61, and which is intersected by Mississippi Highway 4, having a population of eleven thousand eight hundred fifty-four (11,854) according to the 1970 federal census, and having an assessed valuation of Fourteen Million Eight Hundred Seventy-two Thousand One Hundred Forty-four Dollars ($14,872,144.00) in 1970, may levy, in its discretion, for the purposes of establishing, operating and maintaining a garbage or rubbish collection or disposal system, an ad valorem tax not to exceed six (6) mills on all taxable property within the area served by the system as set out in paragraph (a) of this subsection.

(d) The board of supervisors of any county having a population in excess of two hundred fifty thousand (250,000), according to the latest federal decennial census, and in which Interstate Highway 55 and Interstate Highway 20 intersect, may levy, in its discretion, for the purposes of establishing, operating and maintaining a garbage or rubbish collection or disposal system, an ad valorem tax not to exceed seven (7) mills on all taxable property within the area served by the system as set out in paragraph (a) of this subsection.

(e) The proceeds derived from any additional millage levied pursuant to paragraphs (a) through (d) of this subsection in excess of two (2) mills shall be excluded from the ten percent (10%) increase limitation under Section 27-39-321 for the first year of such additional levy and shall be included within such limitation in any year thereafter. The proceeds from any millage levied pursuant to paragraph (g) shall be excluded from the ten percent (10%) increase limitation under Section 27-39-321 for the first year of the levy and shall be included within the limitation in any year thereafter.

(f) The rate of the ad valorem tax levied under this section shall be shown as a line item on the notice of ad valorem taxes on taxable property owed by the taxpayer.

(g) In lieu of the ad valorem tax authorized in paragraphs (a), (b), (c) and (d) of this subsection, the fees authorized in subsection (2) of this subsection and in Section 19-5-17 or any combination thereof, the board of supervisors may levy an ad valorem tax not to exceed six (6) mills to defray the cost of establishing and operating the system provided for in Section 19-5-17 on all taxable property within the area served by the system as provided in paragraph (a) of this subsection.

Any board of supervisors levying the ad valorem tax authorized in this paragraph (g) is prohibited from assessing or collecting fees for the services provided under the system.

(2) In addition to the ad valorem taxes authorized in paragraphs (a), (b) and (c) of subsection (1) or in lieu of any other method authorized to defray the cost of establishing and operating the system provided for in Section 19-5-17, the board of supervisors of any county with a garbage or rubbish collection or disposal system may assess and collect fees to defray the costs of the services. The board of supervisors may assess and collect the fees from each single family residential generator of garbage or rubbish. The board of supervisors also may assess and collect the fees from each industrial, commercial and multifamily residential generator of garbage or rubbish for any time period that the generator has not contracted for the collection of garbage and rubbish that is ultimately disposed of at a permitted or authorized nonhazardous solid waste management facility. The fees assessed and collected under this subsection may not exceed, when added to the proceeds derived from any ad valorem tax imposed under this section and any special funds authorized under subsection (7), the actual costs estimated to be incurred by the county in operating the county garbage and rubbish collection and disposal system.

(3)(a) Before the adoption of any order to increase the ad valorem tax assessment or fees authorized by this section, the board of supervisors shall publish a notice advertising their intent to adopt an order to increase the ad valorem tax assessment or fees authorized by this section. The notice shall specify the purpose of the proposed increase, the proposed percentage increase and the proposed percentage increase in total revenues for garbage or rubbish collection or disposal services or shall contain a copy of the resolution by the board stating their intent to increase the ad valorem tax assessment or fees. The notice shall be published in a newspaper published or having general circulation in the county for no less than three (3) consecutive weeks before the adoption of the order. The notice shall be in print no less than the size of eighteen (18) point and shall be surrounded by a one-fourth (¼) inch black border. The notice shall not be placed in the legal section notice of the newspaper. There shall be no language in the notice stating or implying a mandate from the Legislature.

(b) In addition to the requirement for publication of notice, the board of supervisors shall notify each person furnished garbage or rubbish collection or disposal service of any increase in the ad valorem tax assessment or fees. In the case of an increase of the ad valorem tax assessment, a notice shall be conspicuously placed on or attached to the first ad valorem tax bill on which the increased assessment is effective. In the case of an increase in fees, a notice shall be conspicuously placed on or attached to the first bill for fees on which the increased fees or charges are assessed. There shall be no language in any notice stating or implying a mandate from the Legislature.

(4) The board of supervisors of each county shall adopt an order determining whether or not to grant exemptions, either full or partial, from the fees for certain classes of generators of garbage or rubbish. If a board of supervisors grants any exemption, it shall do so in accordance with policies and procedures, duly adopted and entered on its minutes, that clearly define those classes of generators to whom the exemptions are applicable. The order granting exemptions shall be interpreted consistently by the board when determining whether to grant or withhold requested exemptions.

(5)(a) The board of supervisors in any county with a garbage or rubbish collection or disposal system only for residents in unincorporated areas may adopt an order authorizing any single family generator to elect not to use the county garbage or rubbish collection or disposal system. If the board of supervisors adopts an order, the head of any single family residential generator may elect not to use the county garbage or rubbish collection or disposal service by filing with the chancery clerk the form provided for in this subsection before December 1 of each year. The board of supervisors shall develop a form that shall be available in the office of the chancery clerk for the head of household to elect not to use the service and to accept full responsibility for the disposal of his garbage or rubbish in accordance with state and federal laws and regulations. The board of supervisors, following consultation with the Department of Environmental Quality, shall develop and the chancery clerk shall provide a form to each person electing not to use the service describing penalties under state and federal law and regulations for improper or unauthorized management of garbage. Notice that the election may be made not to use the county service by filing the form with the chancery clerk's office shall be published in a newspaper published or having general circulation in the county for no less than three (3) consecutive weeks, with the first publication being made no sooner than five (5) weeks before the first day of December. The notice shall state that any single family residential generator may elect not to use the county garbage or rubbish collection or disposal service by the completion and filing of the form for that purpose with the chancery clerk's office before December 1 of that year. The notice shall also include a statement that any single family residential generator who does not timely file the form shall be assessed any fees levied to cover the cost of the county garbage or rubbish collection or disposal service. The chancery clerk shall maintain a list showing the name and address of each person who has filed a notice of intent not to use the county garbage or rubbish collection or disposal service.

(b) If the homestead property of a person lies partially within the unincorporated service area of a county and partially within the incorporated service area of a municipality and both the municipality and the county provide garbage collection and disposal service to that person, then the person may elect to use either garbage collection and disposal service. The person shall notify the clerk of the governing authority of the local government whose garbage collection and disposal service he elects not to use of his decision not to use such services by certified mail, return receipt requested. The person shall not be liable for any fees or charges from the service he elects not to use.

(6) The board may borrow money for the purposes of defraying the expenses of the system in anticipation of:

(a) The tax levy authorized under this section;

(b) Revenues resulting from the assessment of any fees for garbage or rubbish collection or disposal; or

(c) Any combination thereof.

(7) In addition to the fees or ad valorem millage authorized under this section, a board of supervisors may use monies from any special funds of the county that are not otherwise required by law to be dedicated for use for a particular purpose in order to defray the costs of the county garbage or rubbish collection or disposal system.

SOURCES: Codes, 1942, § 2912.7-02; Laws, 1971, ch. 370, § 2; Laws, 1972, ch. 368, § 1; Laws, 1973, ch. 355, § 1; Laws, 1987, ch. 507, § 14; Laws, 1990, ch. 563, § 1; Laws, 1991, ch. 581, § 28; Laws, 1992, ch. 583 § 13; Laws, 1994, ch. 624, § 4; Laws, 1996, ch. 536, § 1; Laws, 1999, ch. 473, § 1; Laws, 2004, ch. 529, § 1, eff from and after passage (approved May 12, 2004.)

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Issuance of bonds for establishment of rubbish and garbage disposal systems, see § 19-19-1.

JUDICIAL DECISIONS

1. Application.

County could not characterize a debtor's obligation for garbage collection services as an ad valorem tax under Miss. Code Ann. § 19-5-21 because the county had not issued an order that indicated that the monthly collection payment was an ad valorem tax. The county had instead authorized the collection of a monthly fee, pursuant to Miss. Code Ann. § 19-5-17, which was not subject to priority treatment as a bankruptcy claim under 11 U.S.C.S. § 507. In re Mitchell, 398 B.R. 557 (Bankr. N.D. Miss. 2008).

ATTORNEY GENERAL OPINIONS

County may contract with third party for billing and collection of garbage fees which are then promptly settled to county. Dyson, August 12, 1992, A.G. Op. #92-0608.

County board of supervisors may provide for and levy rates, fees and charges for garbage collection and may make provisions for exemptions of certain classes of users provided it can do so in manner consistent with requirements of equal protection, due process and other constitutional mandates. Smith, August 26, 1992, A.G. Op. #92-0575.

Surcharge on amount of ad valorem tax to fund garbage collection system should be collected as other property taxes are collected; rate of such surcharge is to be shown as line item on notice of ad valorem taxes on taxable property owed by the taxpayer. McLaurin, Oct. 21, 1992, A.G. Op. #92-0798.

If garbage fee is surcharge on ad valorem taxes imposed pursuant to Section 19-5-21(2) rather than fee set under Section 19-5-17, tax collector has statutory duty to collect surcharge. McLaurin, Nov. 4, 1992, A.G. Op. #92-0855.

County may, under current law, collect millage and fees to defray costs of operating solid waste collection and disposal system. Hemphill Nov. 3, 1993, A.G. Op. #93-0588.

There is no language in Section 19-5-21(2) that suggests surcharge must be levied by board of supervisors as matter of law; county could in exercise of its discretion levy surcharge, but it was not required to do so. Kilpatrick, Feb. 24, 1994, A.G. Op. #94-0012.

A garbage fee would not be a tax for each industrial, commercial and multi-family residential generator of garbage that has otherwise contracted for the collection of garbage since the fees would be imposed with the consent or voluntary action of those generators. See Sections 19-5-17 and 19-5-21(2). Walley, August 14, 1995, A.G. Op. #95-0323.

Severance taxes may not be used pursuant to Section 19-5-21(7) to defray the costs of the county garbage or rubbish collection or disposal system. Haque, August 2, 1996, A.G. Op. #96-0455.

Under Section 19-5-21(7), no funds that are otherwise dedicated for a particular purpose may be expended by the county for costs associated with the garbage or rubbish collection or disposal system. Haque, August 2, 1996, A.G. Op. #96-0455.

Any motor vehicle owned by a person who is delinquent in the payment of garbage fees is subject to distraint for nonpayment of those fees; while payment of the fees is a prerequisite to the issuance of a car tag, if the tag is issued in error, it cannot be voided nor can the vehicle be subjected to distraint; however, the county may either sue the individual in justice court or place a lien on the individual's property. Allen, January 30, 1998, A.G. Op. #97-0787.

A county board of supervisors may, at any time during the fiscal year, amend its order setting solid waste fees and offer full or partial exemptions under subsection (4) of this section, although such amendment will only be prospective in effect. Barry, July 2, 1999, A.G. Op. #99-0330.

If a county board of supervisors elects to levy ad valorem taxes pursuant to subsection (1)(g), the board may not grant partial or full exemption on certain classes of property that would otherwise be subject to the levy. Golding, April 21, 2000, A.G. Op. #2000-0213.

A person may dispose of solid waste from his own household upon his own land only if he is a single-family generator and the county board of supervisors has so authorized; any person disposing of solid waste on his own land must nevertheless comply with all state and federal laws, rules and regulations governing such disposal. Caughman, March 10, 2000, A.G. Op. #99-0194.

A county may utilize a combination of generator fees, charges, or ad valorem assessment not to exceed four mills to defray the cost of providing garbage services or, in lieu of any other fees or taxes, a county may charge an amount not to exceed six mills; however, in no case may a county through any combination of taxes, fees, and special funds exceed the actual costs estimated to operate the county garbage and rubbish collection and disposal system. Andrews, Aug. 31, 2001, A.G. Op. #01-0531.

A county in its discretion may grant an exemption from garbage fees for schools, community hospitals, and other classes of generators. Johnson, Oct. 29, 2001, A.G. Op. #01-0555.

There was no authority for the county to use solid waste disposal funds to defray the cost of a proposed E-911 Geographic Information Services System. Shepard, Mar. 29, 2002, A.G. Op. #02-0135.

Subsection (4) of this section clearly provides authority for a board of supervisors to determine whether to grant exemptions from garbage or rubbish collection fees. A prior opinion (Rutledge (Aug. 6, 2002) was based upon Section 21-27-27, which prohibits municipal governing authorities from providing free or discounted municipal services except to listed entities; the applicability of that opinion is limited to municipalities. Barry, July 25, 2003, A.G. Op. 03-0369.

The language of this section clearly provides authority for a board of supervisors to determine whether to grant exemptions from garbage or rubbish collection fees for certain classes of generators, including individuals over the age of 65. Lowery, Mar. 19, 2004, A.G. Op. 04-0109.

If a county levies up to 4 mills for garbage collection pursuant to subdivision (1)(a) of this section, then it may use the authority granted under subsection (4) of the section to exempt certain properties that do not generate garbage or pay for private garbage services such as farmland, commercial and/or industrial property. Hudson, Aug. 6, 2004, A.G. Op. 04-0343.

A county board of supervisors may have the authority to grant exemptions from garbage collection fees for for churches, so long as the requirements of the statute are met. Creekmore, Oct. 21, 2005, A.G. Op. 05-0505.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 48.

§ 19-5-22. Assessment of fees and charges; joint and several liability of generator and property owner; notice; liens; discharge of liens; levy of garbage fees as special assessment against property in lieu of lien.

(1) Fees for garbage or rubbish collection or disposal shall be assessed jointly and severally against the generator of the garbage or rubbish and against the owner of the property furnished the service. Any person who pays, as a part of a rental or lease agreement, an amount for garbage or rubbish collection or disposal services shall not be held liable upon the failure of the property owner to pay those fees.

(2) Every generator assessed the fees authorized by Section 19-5-21 and the owner of the property occupied by that generator shall be jointly and severally liable for the fees. The fees shall be a lien upon the real property offered garbage or rubbish collection or disposal service.

The board of supervisors may assess the fees annually. If the fees are assessed annually, the fees for each calendar year shall be a lien upon the real property beginning on January 1 of the next immediately succeeding calendar year. The person or entity owing the fees, upon signing a form provided by the board of supervisors, may pay the fees in equal installments.

If fees are assessed on a basis other than annually, the fees shall become a lien on the real property offered the service on the date that the fees become due and payable.

No real or personal property shall be sold to satisfy any lien imposed under this subsection (2).

The county shall mail a notice of the lien, including the amount of unpaid fees and a description of the property subject to the lien, to the owner of the property.

(3) Liens created under subsection (2) may be discharged by filing with the circuit clerk a receipt or acknowledgement, signed by the designated county official or billing and collection entity, that the lien has been paid or discharged.

(4)(a) The board of supervisors may notify the tax collector of any unpaid fees assessed under Section 19-5-21 within ninety (90) days after the fees are due. Before notifying the tax collector, the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity for a hearing, that complies with the due process protections the board deems necessary, consistent with the Constitutions of the United States and the State of Mississippi. The board of supervisors shall establish procedures for the manner in which notice shall be given and the contents of the notice; however, each notice shall include the amount of fees and shall prescribe the procedure required for payment of the delinquent fees. The board of supervisors may designate a disinterested individual to serve as hearing officer.

(b) Upon receipt of a delinquency notice, the tax collector shall not issue or renew a motor vehicle road and bridge privilege license for any motor vehicle owned by a person who is delinquent in the payment of fees unless those fees in addition to any other taxes or fees assessed against the motor vehicle are paid. Payment of all delinquent garbage fees shall be deemed a condition of receiving a motor vehicle road and privilege license tag.

(c) The tax collector may forward the motor vehicle road and privilege license tag renewal notices to the designated county official or entity that is responsible for the billing and collection of the county garbage fees. The designated county official or the billing and collection entity shall identify those license tags that shall not be issued due to delinquent garbage fees. The designated county official or the billing and collection entity shall stamp a message on the license tag renewal notices that the tag will not be renewed until delinquent garbage fees are paid. The designated county official or the billing and collection entity shall return the license tag notices to the tax collector before the first of the month.

(d) Any appeal from a decision of the board of supervisors under this section regarding payment of delinquent garbage fees may be taken as provided in Section 11-51-75.

(5) The board of supervisors may levy the garbage fees as a special assessment against the property in lieu of the lien authorized in this section. The board of supervisors shall certify to the tax collector the assessment due from the owner of the property. The tax collector shall enter the assessment upon the annual tax roll of the county and shall collect the assessment at the same time he collects the county ad valorem taxes on the property.

No real or personal property shall be sold to satisfy any assessment imposed under this subsection (5).

SOURCES: Laws, 1994, ch. 624, § 5; Laws, 1996, ch. 536, § 2; Laws, 1997, ch. 423, § 1; Laws, 2008, ch. 441, § 1; Laws, 2009, ch. 421, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. Application.

Chancellor did not err in granting partial summary judgment to the county in dismissing the property owner's claims under Miss. Code Ann. § 19-5-22 and 42 U.S.C.S. § 1983 because the initial requirement for either a procedural or substantive due process claim was proving the plaintiff had been deprived by the government of a liberty or property interest; otherwise, no right to due process could accrue. The property owner failed to prove injury to himself since it was the property owner's tenant, and not the property owner, who the lien was against. LaCroix v. Marshall County Bd. of Supervisors, 28 So. 3d 650 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 90 (Miss. 2010).

County could not impose a lien on a debtor's property after the debtor failed to pay fees for garbage collection. because the county had not issued an order or an amended order to provide the county with the means to appropriately enforce the lien provision found in Miss. Code Ann. § 19-5-22. In re Mitchell, 398 B.R. 557 (Bankr. N.D. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Under Section 19-5-22(3), the county may suspend the ability of a waste generator to obtain an automobile license plate during the pendency of a bankruptcy. Walley, August 14, 1995, A.G. Op. #95-0323.

Hearing may be held under this section to establish if garbage service was in fact provided to a person owing delinquent garbage fees and, based on the outcome of the hearing, if the individual should be removed from the delinquent list and have garbage service arranged. Barrett, Aug. 8, 1997, A.G. Op. #97-0474.

A property owner is jointly and severally liable with the delinquent renter for the payment of garbage fees on property and, further, if the fees are not paid, the tax collector, after notice and hearing, may withhold the owner's motor vehicle tag until payment, and the renter may also be held liable as long as he does not pay; a "generator" responsible with the owner for garbage fees includes all persons residing at an address for which garbage collection is provided and, if fees are delinquent, any person residing therein may, after notice and hearing, be deprived of his tag until the fees are paid. Robinson, January 30, 1998, A.G. Op. #98-0045.

Any motor vehicle owned by a person who is delinquent in the payment of garbage fees is subject to distraint for nonpayment of those fees; while payment of the fees is a prerequisite to the issuance of a car tag, if the tag is issued in error, it cannot be voided nor can the vehicle be subjected to distraint; however, the county may either sue the individual in justice court or place a lien on the individual's property. Allen, January 30, 1998, A.G. Op. #97-0787.

The statute authorizes a lien for the nonpayment of garbage fees, and these fees become a lien on the property by operation of law, meaning that a court order is not necessary; the chancery clerk should record these liens in a separate book and treat them in the same manner as special assessments are handled. Prichard, July 10, 1998, A.G. Op. #98-0386.

A property owner is liable for the payment of delinquent garbage fees even if the generator lives on the property without paying rent, unless otherwise exempted. Robinson, April 2, 1999, A.G. Op. #99-0135.

Board of supervisors may not place an annual assessment for garbage or rubbish fees on ad valorem tax statements. Smith, June 20, 2003, A.G. Op. 03-0258.

In the case of the death of a property owner, the county should attempt to collect any delinquent fees from the generator if the generator does not pay a garbage fee as part of the lease agreement. Collection attempts would include withholding a motor vehicle road and bridge privilege license if garbage fees remain delinquent. However, if garbage fees are part of the lease agreement, then the county must attempt to collect those fees from the property owner's estate. Hemphill, Apr. 16, 2004, A.G. Op. 04-0146.

A county cannot enter into a written agreement with any person delinquent in their garbage fees to accept a partial payment up front and then the remainder in installments in exchange for releasing the hold on the motor vehicle tag. Hemphill, July 16, 2004, A.G. Op. 04-0269.

In addition to accepting payment of non-delinquent garbage fees by installment, the county may accept payment of delinquent garbage fees in installments. Hemphill, July 16, 2004, A.G. Op. 04-0269.

Due to the mandatory language in subdivision (4)(b) of this section, a county cannot allow a motor vehicle tag to be issued to the owner until all delinquent solid waste fees are paid. Therefore, the statute does not permit the county to issue the motor vehicle tag while the owner pays the delinquent fees in installments. Additionally, however, pursuant to subdivision (4)(a), the board of Supervisors may, but are not required to, notify the tax collector of any unpaid fees assessed under § 19-5-21. Ray, Sept. 3, 2004, A.G. Op. 04-0430. And see Hemphill, July 16, 2004, A.G. Op. 04-0269.

Subsection (2) of this section does not prohibit the garnishment of wages. Abraham, Sept. 10, 2004, A.G. Op. 04-0418.

If a board of supervisors follows the procedure prescribed by this section, the tax collector must refuse the sale of a tag until all assessed fees are paid. Jeanes, Sept. 24, 2004, A.G. Op. 04-0463.

A county may contract with a county cooperative service district to provide garbage disposal and to bill and collect the fees for the garbage service. The services may be performed for either an annual or monthly fee. Hudson, Oct. 8, 2004, A.G. Op. 04-0480.

Acceptance of delinquent garbage fees is not a statutorily prescribed duty of a tax collector. Dowdy, Mar. 11, 2005, A.G. Op. 05-0086.

While a housing authority would clearly be exempt from a property tax for garbage collection, no authority can be found exempting housing authorities, or other public entities, from the payment of a fee imposed by the county to cover the cost of garbage collection. Turnage, June 2, 2006, A.G. Op. 06-0178.

A housing authority's failure to pay garbage fees results in a "lien" upon the property pursuant to Section 19-5-22(2), but it does not actually encumber the property such that the property could be sold to satisfy the lien. Rather, Section 19-5-22(4) prohibits the tax collector, upon receipt of a delinquency notice from the Board, from issuing a car tag to a vehicle owner who is delinquent in the payment of these fees, and, therefore, the county may refuse to issue a car tag to the authority. Turnage, June 2, 2006, A.G. Op. 06-0178.

A county may institute legal proceedings against housing authority (and possibly the tenants) to collect garbage fees, in addition to implementing any other administrative procedures established by the county under Section 19-5-22(4). Turnage, June 2, 2006, A.G. Op. 06-0178.

The attorney for the board of supervisors is not eligible to be appointed as garbage court judge for the county. Shepard, June 19, 2006, A.G. Op. 06-0245.

Disallowing a property tax homestead exemption for failure to pay delinquent garbage bills constitutes an increase in taxes not authorized in statute, and therefore is prohibited by Miss. Code Ann. § 19-3-40(2)(a). Burgoon, March 2, 2007, A.G. Op. #07-00060, 2007 Miss. AG LEXIS 86.

§ 19-5-23. Notice of tax levy; protest; election.

The tax levy authorized by Section 19-5-21 shall not be imposed until the board of supervisors shall have published notice of its intention to levy same. Said notice shall be published once each week for three (3) consecutive weeks in some newspaper having a general circulation in such county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to levy such tax. If, within the time of giving notice, twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the district affected shall protest or file a petition against the levy of such tax, then such tax shall not be levied unless authorized by a majority of the qualified electors of such district voting at an election to be called and held for that purpose. The notice provided for herein shall only be required prior to the initial levy except when the board of supervisors intends to increase the levy over the amount shown in the initial notice.

SOURCES: Codes, 1942, § 2912.7-03; Laws, 1971, ch. 370, § 3; Laws, 1976, ch. 367, eff from and after passage (approved April 23, 1976).

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

ATTORNEY GENERAL OPINIONS

Since proposed district excludes municipalities, citizens whose domicile is within municipality could not be "qualified electors of the district"; therefore, county residents who reside within incorporated municipality may not participate in election. Jones, August 9, 1990, A.G. Op. #90-0581.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-5-25. Reimbursement of tax levies.

The levies made under Section 19-5-21 shall not be reimbursed under the Homestead Exemption Law of 1946, being Sections 37-57-3 and 37-57-35, Mississippi Code of 1972, and any other statute authorizing the levy of taxes for the support of schools.

SOURCES: Codes, 1942, § 2912.7-06; Laws, 1971, ch. 370, § 6, eff from and after passage (approved March 16, 1971).

Editor's Note — Section 37-57-3 referred to in this section was repealed by Laws of 1986, ch. 492, § 189, eff from and after July 1, 1987.

Section 37-57-35 referred to in this section was repealed by Laws of 1983, ch. 471, § 28, eff from and after July 1, 1983.

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

§ 19-5-27. Supplementary method for garbage and rubbish removal.

Sections 19-5-18 through 19-5-27 provide counties a supplementary method for handling garbage and rubbish removal. These sections do not amend or repeal Section 19-5-17, Sections 17-5-3 through 17-5-11, or any other law relating to the subject, including any special or local law which may have been enacted or which may hereafter be enacted by the Legislature regarding payment of costs for garbage or rubbish removal or collection of delinquent fees assessed for garbage or rubbish removal.

SOURCES: Codes, 1942, § 2912.7-05; Laws, 1971, ch. 370, § 5; Laws, 1997, ch. 423, § 2, eff from and after passage (approved March 24, 1997).

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

§ 19-5-29. Payment for laying certain water mains.

The boards of supervisors of the several counties of this state may, in their discretion, pay such part of the cost of labor and material for laying water mains from municipal water systems along the highways outside the corporate limits of such municipalities, not exceeding a distance of five miles, as in their discretion, may be to the public interest of their respective counties. Such expenditure on the part of a board of supervisors shall not exceed one-half of the entire total cost of labor and material for laying such water main.

However, no part of said expense is to be borne by any board of supervisors unless there is situate on the route of such proposed water main one or more county schools.

SOURCES: Codes, 1930, § 289; 1942, § 2993; Laws, 1926, ch. 203.

Cross References — Payment for relocation of water lines, see § 19-5-30.
Power of municipality to establish waterworks, see § 21-27-7.

§ 19-5-30. Payment for relocating water lines.

The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to render any assistance deemed necessary in order to defray the cost of the relocation of a water line operated within the county by a local water association when such relocation is required for the development of a public road or other county improvement. Such assistance may be rendered by the board upon a finding that such would be in the best interest of the county.

SOURCES: Laws, 1985, ch. 313, eff from and after passage (approved March 8, 1985).

ATTORNEY GENERAL OPINIONS

A "public road" for the purposes of Section 19-5-30 includes state highways. Therefore the board of supervisors may, upon a finding, consistent with fact and placed upon the minutes, that such assistance would be in the best interest of the county, act as the recipient of CDBG grant funds to be used to defray the water district's costs of relocating water lines necessitated by state highway construction in the county. Chamberlin, November 17, 1995, A.G. Op. #95-0697.

§ 19-5-31. Golden Age Nursing Homes; establishment and operation.

The board of supervisors of each county in the state, acting alone or in conjunction with boards of supervisors of an adjoining county or counties, shall have the power and jurisdiction necessary and proper to provide for the relief and support of the aged bona fide residents of said county or counties, of good moral character and over sixty-five years of age, and, to that end, may purchase the necessary lands for the establishment of a Golden Age Nursing Home in said county or counties, and may employ suitable persons to control and operate same and to see that such aged persons are properly treated, and may provide physicians and nurses in such cases as it may deem proper, and purchase the necessary medicines and medical supplies and pay for all of same out of the general fund of said county or counties, or out of any funds ensuing from any levy made by such board of supervisors for the support and maintenance of such institutions.

The board of supervisors of said county or counties may prescribe such rules and regulations as it may deem expedient and necessary for the operation and maintenance of said county nursing home, and may employ any person as superintendent or other employees that may be required and necessary in the operation of such institution.

SOURCES: Codes, 1942, §§ 2998.7-01, 2998.7-04; Laws, 1962, ch. 403, §§ 1, 4, eff from and after passage (approved June 1, 1962).

Cross References — Authority of county to match federal funds for old age assistance, see § 43-9-47.

ATTORNEY GENERAL OPINIONS

A board of supervisors may sell a golden age home and the land on which it is situated by a lease/purchase sale, conditioned upon the new owner continuing to operate it as a golden age home. Further, a board of supervisors may sell a golden age home and the land on which it is situated by a lease/purchase sale with no requirement that the home be operated as a golden age home if some provision is made for the county's destitute aged citizens. Shepard, Aug. 23, 2004, A.G. Op. 04-0322.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 189.

§ 19-5-33. Golden Age Nursing Homes; land, buildings and equipment for institution.

The board of supervisors of such county or counties may purchase in the name of such county or counties such lands as may be necessary for such institution, or may use such lands available which already belong to the board of supervisors, and may have such buildings erected thereon and equipment installed therein as may be necessary, after advertising therefor as the law directs.

SOURCES: Codes, 1942, § 2998.7-02; Laws, 1962, ch. 403, § 2, eff from and after passage (approved June 1, 1962).

Cross References — Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

ATTORNEY GENERAL OPINIONS

There is no statute that specifically authorizes the Commercial Mobile Radio Service Board to retain all of the interest levied and collected from late remitting providers (the late charge) and use any or all of it to carry out any or all of its powers and duties as provided in Section 19-5-333 (2) as it deems appropriate. Easterling, Aug. 19, 2005, A.G. Op. 05-0412.

Interest levied on late-remitting providers should be deposited into the commercial mobile radio service fund and distributed pursuant to Section 19-5-333 (2)(c)(i). Sandifer, Aug. 19, 2005, A.G. Op. 05-0412.

§ 19-5-35. Golden Age Nursing Homes; combined institution for care of county paupers and destitute aged.

The board of supervisors of such county or counties may, when deemed proper, combine and use any property now being used for county homes and use such property hereafter as a combined institution to take care of the county paupers and the destitute aged provided for in Section 19-5-31 through

19-5-39, in which event the Golden Age Home may take care of all such persons.

SOURCES: Codes, 1942, § 2998.7-03; Laws, 1962, ch. 403, § 3, eff from and after passage (approved June 1, 1962).

ATTORNEY GENERAL OPINIONS

A county has a duty to provide for it's destitute aged citizens. Shepard, Aug. 23, 2004, A.G. Op. 04-0322.

§ 19-5-37. Golden Age Nursing Homes; funds for support and maintenance.

The board of supervisors of such county or counties may, in its discretion, set aside, appropriate and expend moneys from the general fund for the support and maintenance of such nursing homes.

SOURCES: Codes, 1942, § 2998.7-05; Laws, 1962, ch. 403, § 5; Laws, 1986, ch. 400, § 5, eff from and after October 1, 1986.

Cross References — Levy of special tax for erection of county buildings, see § 19-9-93.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 48, 50.

§ 19-5-39. Golden Age Nursing Homes; issuance of bonds.

The board of supervisors of any county or counties coming within the provisions of Section 19-5-31 through 19-5-39 may issue and sell its full faith and credit bonds as otherwise provided by law to secure funds with which to construct and equip such Golden Age Nursing Homes.

SOURCES: Codes, 1942, § 2998.7-06; Laws, 1962, ch. 403, § 6, eff from and after passage (approved June 1, 1962).

Cross References — Issuance of county bonds and notes generally, see §§ 19-9-1 et seq.

ATTORNEY GENERAL OPINIONS

Private nonprofit museums are allowable objects of county donations. Trapp, March 6, 1998, A.G. Op. #98-0123.

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 411-429.

§ 19-5-41. Creation of county hospital building commission in certain counties.

The board of supervisors of any county in the state having a population of more than one hundred thousand, according to the federal census of 1950, is authorized to create a county hospital building commission with authority to advise and assist such board of supervisors in all phases of the establishment of a county hospital, including, but not limited to, land acquisition, and the planning, constructing and staffing of such hospital.

The commission herein authorized shall consist of not more than seven members, one of whom shall be from each of the supervisors districts in such county, and two of whom shall be selected from the county at large, and the board of supervisors may pay to each of the members of said commission the sum of Twenty Dollars ($20.00) per day while attending to the duties in connection with the work of the commission.

SOURCES: Codes, 1942, § 3002.7; Laws, 1962, ch. 243, §§ 1-3, eff from and after passage (approved May 2, 1962).

§ 19-5-43. Temporary care and maintenance of individuals with mental illness who are unable to pay for care.

The boards of supervisors in their respective counties shall temporarily provide for the care and maintenance of any person alleged to have mental illness when the person has no means of paying that expense, pending an investigation into the mental status of the person alleged to have mental illness before the chancery clerk of the county, and provide for the care and maintenance of those persons by the sheriff of their respective counties after being adjudged as a person with mental illness by the properly constituted authority, when there is no room in one (1) of the state psychiatric hospitals or institutions for the person with mental illness. The boards shall cause all reasonable and proper allowance for that care and maintenance to be paid out of the county treasury.

SOURCES: Codes, 1906, § 308; Hemingway's 1917, § 3681; 1930, § 238; 1942, § 2916; Laws, 2008, ch. 442, § 8, eff from and after July 1, 2008.

Cross References — Use of Golden Age Nursing Homes for care of county paupers, see § 19-5-35.

Paupers generally, see §§ 43-31-1 et seq.

Duty of member of board of supervisors to examine into pauper's right to support, see § 43-31-21.

§ 19-5-45. Construction of sheltered workshop for employment of handicapped.

Any county within the State of Mississippi wherein the railroads known as the Illinois Central and the Mississippi Central intersect, and any county with a population of not less than twenty-one thousand nor more than twenty-one thousand five hundred and with an assessed valuation in excess of Sixteen Million Dollars ($16,000,000.00), and in which State Highway 35 and State Highway 12 intersect, is hereby authorized and empowered to issue the negotiable bonds or certificates of indebtedness of said county for the purpose of constructing an industrial building to be used as a sheltered workshop for the employment of handicapped people, and said county is hereby authorized to retain two mills of the state ad valorem tax levy for a period not in excess of five years for the purpose of assisting in the retirement of said bonds and interest thereon.

The board of supervisors of any county coming within the provisions of this section shall be authorized to levy, at the time and in the prescribed manner other county tax levies are made, an ad valorem tax of one-fourth mill for each mill retained levied against all of the taxable property of such county, and such levy shall be made a condition precedent to the operation of this section.

The amount of bonds or certificates of indebtedness issued for this purpose shall not exceed the sum of One Hundred Fifty Thousand Dollars ($150,000.00) and the two mill state ad valorem tax levy herein authorized to be retained for the retirement of said bonds may be pledged, together with the full faith and credit of the county, for the payment of said bonds at maturity and the interest thereon.

In issuing the bonds herein authorized, it shall only be necessary for the board of supervisors of said county to adopt a resolution providing for the sale and issuance of said bonds as now provided by law.

SOURCES: Codes, 1942, § 2996.5; Laws, 1964, ch. 280, § 1, eff June 5, 1964.

Cross References — Assistance for disabled needy people generally, see §§ 43-29-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 59, 61.

§ 19-5-47. Construction of public health buildings and clinics.

The board of supervisors of any county in the state is hereby empowered, in its discretion, to acquire by gift, donation or purchase necessary real estate on which to erect, construct or reconstruct public health buildings and clinics sponsored by the public health units of any county, or a public health building to house the county health department, said funds to be expended out of the general fund or out of any fund collected from a special levy made by said county for public health purposes. In said construction the board of supervisors of all counties are hereby empowered to erect said buildings in conjunction with any municipality situated in any county or in conjunction with any federal agency, and the board of supervisors is hereby authorized to sponsor any of such said projects, or, in the discretion of said board, said buildings may be constructed under contract after advertising as provided by law and upon competitive bids received therefor.

SOURCES: Codes, 1942, § 2997; Laws, 1940, ch. 302; Laws, 1942, ch. 212.

Cross References — Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 481.

§ 19-5-49. Lease of county homes and farms.

The board of supervisors of any county in the State of Mississippi is hereby authorized, in its discretion, to lease or rent any lands or buildings owned by the county and being used, or intended to be used, as a county home and farm to any person, persons, or association for the purposes of using such land and buildings for the care and keeping of old, infirm, or indigent persons. At any time that such lands and buildings cease to be used for such purposes, then such lease shall automatically expire.

SOURCES: Codes, 1942, § 2997-01; Laws, 1946, ch. 260.

ATTORNEY GENERAL OPINIONS

Quitman County may acquire property from a school district that it will in turn convey to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 493 et seq.

§ 19-5-50. Controlling running of animals at large; establishing county pounds.

(1) The governing authorities of any county bordering on the Gulf of Mexico and having within its boundaries two cities having in excess of forty thousand (40,000) population each, according to the 1970 United States

decennial census and of any county bordering on the Pearl River having two (2) judicial districts, wherein is housed the seat of state government, wherein U. S. Interstates 55 and 20 interchange and having a population in excess of two hundred thousand (200,000), according to the 1970 federal decennial census, shall have the power to prevent or regulate the running at large of animals of all kinds, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such regulations and the expense of impounding and keeping and selling the same; to regulate and provide for the taxing of owners and harborers of dogs, and to destroy dogs running at large, unless such dogs have proper identification indicating that said dogs have been vaccinated for rabies; and to provide for the erection of all needful pens, pounds, and buildings for the use of the county, and to appoint and confirm keepers thereof, and to establish and enforce rules governing the same.

(2) The governing authorities of any county bordering on the Gulf of Mexico and having within its boundaries two (2) cities having in excess of forty thousand (40,000) population each, according to the 1970 federal decennial census, and of any county bordering on the Gulf of Mexico and the State of Alabama in which there is a shipyard which constructs oceangoing vessels, and any county bordering on the Gulf of Mexico and the State of Louisiana and through which U.S. Interstate Highway 10 runs, shall have the power to prevent or regulate the running at large of animals of all kinds, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such regulations and the expense of impounding and keeping and selling the same; to regulate and provide for the taxing of owners and harborers of dogs, and to destroy dogs running at large unless such dogs have proper identification indicating that said dogs have been vaccinated for rabies; and to provide for the erection of all needful pens, pounds and buildings for the use of the county, and to appoint and confirm keepers thereof, and to establish and enforce rules governing the same.

SOURCES: Codes, 1942, § 3374-153; Laws, 1972, ch. 509, § 1; Laws, 1974, ch. 560, eff from and after passage (approved April 18, 1974).

Editor's Note — Subsection (2) of this section is that part of Laws, 1974, ch. 560, pertaining to counties. Although Chapter 560 purported to amend § 21-19-9, because the power to control the running of animals had previously been conferred upon certain other counties by Laws, 1972, ch. 509, which was codified as § 19-5-50, that part of Laws, 1974, ch. 560 pertaining to counties was codified as part of the section. Subsection (1) is codified from Chapter 509, Laws of 1972.

Cross References — Control of animals running at large in municipalities, see § 21-19-9.

Prohibition against livestock roaming at large upon public highways, see §§ 69-13-101 et seq.

ATTORNEY GENERAL OPINIONS

Certain counties have express authority to regulate running at large of animals and to cause them to be impounded pursuant to Miss. Code Section 19-5-50, but whether specific county falls within described counties is question of fact. Edens, Apr. 28, 1993, A.G. Op. #93-0264.

Assuming a county falls within those described in subsection (2), it may tax the owners and harborers of dogs by countywide ordinance. Yancey, May 17, 2002, A.G. Op. #02-0259.

The statute does not apply to cats and other domesticated animals. Yancey, May 17, 2002, A.G. Op. #02-0259.

The decision whether or not to require registration and a "dog tax" is discretionary with the Board of Supervisors. Yancey, May 17, 2002, A.G. Op. #02-0259.

Pursuant to §§ 19-3-41 and 19-3-40, a county not designated in this section may contract for animal services and thereby operate an animal shelter for use by county residents for the temporary and/or permanent shelter of animals of all kinds. O'Donnell, Oct. 15, 2004, A.G. Op. 04-0473.

RESEARCH REFERENCES

ALR. Validity of statute or ordinance providing for destruction of dogs. 56 A.L.R.2d 1024.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am Jur. 4 Am. Jur. 2d, Animals §§ 90 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 49, 50 (complaint, petition, or declaration-personal injuries-by dog).

CJS. 62 C.J.S., Municipal Corporations § 274.

§ 19-5-51. Bounty on beaver, nutria, and bobcats.

Any board of supervisors may, in its discretion, by appropriate resolution spread upon its minutes, offer a bounty not to exceed Five Dollars ($5.00) for each nutria, beaver or bobcat destroyed, where such board finds and determines that nutria, beaver or bobcats are in such quantities that the preservation of trees and other properties requires such bounties to be offered. Upon presentation to the sheriff of the complete tail of a nutria, beaver or bobcat, the sheriff shall execute a receipt therefor. Upon filing of such receipt with the chancery clerk, the amount of such bounty may be allowed by the board of supervisors as are other accounts against the county.

There is further provided a bounty on beaver not to exceed Five Dollars ($5.00) for each beaver to be paid in the following manner: upon the presentation of the tail of any beaver, any conservation officer of the state shall issue a receipt in such form as prescribed by the Mississippi Commission on Wildlife, Fisheries and Parks to the person presenting such tail. The Mississippi Department of Wildlife, Fisheries and Parks shall redeem such receipts by paying to such person a sum not to exceed Five Dollars ($5.00) for each such receipt as bounty. The redemption of such receipts shall be paid only from funds especially appropriated for this purpose and it is expressly provided that no such bounty shall be paid from any regular receipts, funds and appropriations of the Mississippi Department of Wildlife, Fisheries and Parks.

For the purposes of carrying out the purposes of this section, the Mississippi Department of Wildlife, Fisheries and Parks and the State Forestry Commission are authorized, empowered and directed, when requested by the board of supervisors or any property owner, to utilize funds, personnel and equipment under reasonable terms and conditions.

No bounty shall be paid when funds, personnel or equipment of the Mississippi Department of Wildlife, Fisheries and Parks, the State Forestry Commission or the county are employed in capturing and killing such animals.

SOURCES: Codes, 1942, § 2890.2; Laws, 1964, ch. 231, § 1; Laws, 1971, ch. 477, § 1; Laws, 1974, ch. 569, § 3; Laws, 2000, ch. 516, § 1, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Power of Mississippi Commission on Wildlife, Fisheries and Parks to enter into agreements with landowners to trap beaver, see § 49-1-29.

Power of Mississippi Commission on Wildlife, Fisheries and Parks to issue permits to kill any species of animals, etc., see § 49-1-39.

Duties and powers of state forestry commission generally, see § 49-19-3.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Bounties § 6.

3B Am. Jur. Legal Forms 2d, Bounties §§ 45:1 et seq.

§ 19-5-53. Promotion of excellence in raising crops and livestock.

The board of supervisors in the various counties of the state are hereby authorized and empowered, in their discretion, to appropriate money out of the general county fund for the purpose of offering premiums for excellence in raising crops and livestock in their county.

SOURCES: Codes, Hemingway's 1917, § 3786; 1930, § 273; 1942, § 2959; Laws, 1910, ch. 144.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 181.

§ 19-5-55. Promotion of excellence in raising crops and livestock; limitation on amount to be expended.

The amount of money to be appropriated and offered shall not exceed the following: (a) for corn — Two Hundred Dollars ($200.00) for the best five acres or more, One Hundred Dollars ($100.00) for the second best and Fifty Dollars ($50.00) for the third best, or half the amounts for three acres; (b) for mule colt — not more than One Hundred Dollars ($100.00) for the best, Seventy-five

Dollars ($75.00) for the second best and Fifty Dollars ($50.00) for the third best; (c) for horse colt — the same as for a mule colt; (d) for cow — not more than Fifty Dollars ($50.00) for the best, Thirty Dollars ($30.00) for the second best and Twenty Dollars ($20.00) for the third best; (e) for hog — the same as for a cow. Other premiums for excellence in raising agricultural, horticultural and livestock products may be given in proportion. No exhibit or entry of any kind which has once been awarded a prize shall be eligible at any other time for a prize.

SOURCES: Codes, Hemingway's 1917, § 3787; 1930, § 274; 1942, § 2960; Laws, 1910, ch. 144.

§ 19-5-57. Promotion of excellence in raising crops and livestock; petition by contestants; publication of premiums.

Before the board of supervisors will be authorized to take action under Sections 19-5-53, 19-5-55, a petition containing the names of not less than one hundred contestants in the county must be on file in the office of the chancery clerk of the county on or before the first Monday of January, in the year in which the premiums are to be offered. Publications of the premiums must be made on or before the 15th day of February in the year in which they are to be offered.

SOURCES: Codes, Hemingway's 1917, § 3788; 1930, § 275; 1942, § 2961; Laws, 1910, ch. 144.

§ 19-5-59. Promotion of excellence in raising crops and livestock; rules governing contest and placing of exhibits.

The board of supervisors shall have the power to issue rules governing the contest, and to determine the time for placing of the exhibits in competition at the county seat.

SOURCES: Codes, Hemingway's 1917, § 2790; 1930, § 277; 1942, § 2963; Laws, 1910, ch. 144.

§ 19-5-61. Promotion of excellence in raising crops and livestock; judges.

The board of supervisors shall, after having announced premiums, select a competent committee or judges to measure the land, to test the crop and pass upon the merits of the exhibits and entries. The members of said committee shall not be related to the contestant in any manner, and the members shall have their report ready for the date of meeting at the county seat in the fall on the date named for exhibit and competition by the said board of supervisors. Members of said committee shall receive compensation as determined upon by the board of supervisors, not to exceed Three Dollars ($3.00) per day, while actually employed in the work.

SOURCES: Codes, Hemingway's 1917, § 3789; 1930, § 276; 1942, § 2962; Laws, 1910, ch. 144.

§ 19-5-63. Establishment of county extension department.

It is declared to be the policy of this state to develop and promote agriculture, including the raising of livestock, and all enterprises and activities dependent upon the products of the soil, and in line with this policy, to make available to the citizens of this state useful and practical information on subjects relating to agriculture and home economics that research has discovered, to encourage the application of the same, and to obtain all the assistance and advantages that the federal government offers to provide.

The board of supervisors of each county in this state may establish a county extension department in agriculture and home economics. The purpose of this department shall be to disseminate useful information among the farmers, farm women, and farm boys and girls, and to develop the agricultural resources and improve the farm homes of this state.

The county extension departments shall be in charge of a county agent and such assistant county agents and home economics agents as the board of supervisors and the extension department of the Mississippi State University of Agriculture and Applied Science may deem adequate to the needs of the county. The board of supervisors upon the recommendation of the director of extension of said university and the approval of the United States Department of Agriculture shall appoint the county agent, assistant county agents and home economics agents, fix their salaries and other necessary expenses, and the amount so fixed shall be paid out of the general fund of the county, but may be supplemented by the extension department of said university and/or the United States Department of Agriculture.

The board of supervisors shall provide office space for the county extension department; shall equip the said office with the necessary office equipment and furniture, and shall also furnish the necessary record books, maps, stationery, postage and other items incidental to the proper operation of the department. The board of supervisors shall also employ such clerical assistance for the department as in the judgment of the board will enable the department to efficiently perform the duties required of it by this section. All such expense shall be paid out of the general fund of the county, but may be supplemented by the extension department of the Mississippi State University of Agriculture and Applied Science and/or the United States Department of Agriculture.

It shall be the duty of the county extension department to carry on farm and home demonstration work, boys and girls club work, organized production and cooperative marketing work, and all other phases of extension work under the joint supervision and control of the board of supervisors, the extension department of the Mississippi State University of Agriculture and Applied Science and the United States Department of Agriculture, under the provisions of the Smith-Lever act and other related acts of congress.

The duties prescribed by the preceding paragraph shall be construed to include and emphasize actual work in the field as distinguished from executive or administrative tasks or office work. In order that the several county extension departments may fully comply with the requirements of this section and perform the duties required of them, the extension department of the Mississippi State University of Agriculture and Applied Science may, upon the approval of the director of extension and the United States Department of Agriculture, employ and pay the salary of an assistant county agent in any county in which the director of extension shall find the services of such assistant necessary and his appointment justified.

The enumeration in the foregoing paragraphs of duties to be performed by agents appointed under this section shall not be taken as exclusive but such agents may perform any duties to accomplish the purposes of this section which they may be directed to perform by the extension department of the Mississippi State University of Agriculture and Applied Science with the approval of the United States Department of Agriculture the expense of which is covered in whole or in part by appropriations received from the federal government or any department thereof for agricultural extension work.

SOURCES: Codes, 1942, § 2964; Laws, 1932, ch. 211; Laws, 1940, ch. 263; Laws, 1942, ch. 207; Laws, 1944, ch. 242, §§ 1-6.

Cross References — Appropriations for construction of buildings for the use of junior beef boys and girls and junior dairy boys and girls, see § 19-5-69.

State agricultural experiment stations, see §§ 37-113-17 et seq.

Duty of commissioner of agriculture and commerce to encourage development of county agricultural clubs and associations, see § 69-1-13.

Studies of commodity exchange entity and Farm Assistance in Rural Mississippi (FARM) Program, to be conducted by Department of Agriculture and Commerce and Cooperative Extension Service, see § 69-1-47.

Coordination of information clearinghouse to assist agricultural community, dissemination of information to program beneficiaries, and preparation of related progress report by Mississippi Cooperative Extension Service, see § 69-2-5.

Board comprised of directors of Department of Economic and Community Development, Cooperative Extension Service, Small Farm Development Center and Agricultural and Forestry Experiment Station, shall develop definitions, guidelines and procedures for implementing Mississippi Farm Reform Act, see § 69-2-13.

Appropriations for the purpose of eradicating serious insect pests, rodents, etc., see § 69-25-33.

ATTORNEY GENERAL OPINIONS

The board of supervisors have the authority to provide a market place where farm products can be sold. Any reasonable expenditure along this line would be thoroughly justifiable under this law, and expenses in this connection would be paid out of the general funds of the county. Ops Atty Gen, 1939-41, p 125.

Considering the authority granted to the board of supervisors to purchase office equipment and other items incidental to the operation of the office of the county agent and considering that the work of the county agent is in the field, the board of supervisors, in its discretion, may provide the county agent with a cellular telephone if it will assist in the accomplishment of her duties. Palmer, Mar. 30, 2001, A.G. Op. #01-0189.

§ 19-5-65. Funding of display rooms for county home economic or home demonstration agents.

The boards of supervisors of counties of class one of the several counties, in their discretion, are hereby authorized and empowered to appropriate and expend moneys out of the general fund of the county for the purpose of renting or otherwise providing offices or display rooms wherein the county home economic or home demonstration agents may display, offer for sale, and sell products and articles produced under and by virtue of the home demonstration and cooperative marketing program of the county extension department.

SOURCES: Codes, 1942, § 2964-01; Laws, 1946, ch. 188.

Cross References — Establishment of county extension department, see § 19-5-63.

§ 19-5-67. Establishment of department of animal husbandry.

The boards of supervisors of two (2) or more counties, one or more of which has an incorporated livestock association, are hereby authorized, in their discretion, to establish a joint department of animal husbandry, the purposes of this department being to disseminate useful information pertaining to animal husbandry among the farmers and to develop livestock resources in the several counties.

The said department of animal husbandry shall be under the direction of a joint commissioner to be appointed by the boards of supervisors of the several counties creating this department, which said commissioner shall be a person well versed in the scientific and practical knowledge of animal husbandry. His title shall be district commissioner of animal husbandry, his salary shall be fixed by the boards of supervisors of the counties in said district, and paid out of the general funds of said counties, and his duties shall be to keep in close touch with the United States Department of Agriculture, the Mississippi State University of Agriculture and Applied Science, and the state experimental stations, to assist in organizing animal husbandry societies, to look after animal husbandry statistics in the counties, to disseminate useful information pertaining to animal husbandry in the counties, and to advance in every way possible promotion of the industry of animal husbandry in the counties of said district.

The board of supervisors of any county maintaining county extension departments in agriculture and home economics and helping to maintain such joint department of animal husbandry, as provided herein, is hereby authorized, in its discretion, to set aside, appropriate and expend moneys from the general fund to help defray the expense of maintaining such departments.

The board of supervisors of any county helping to maintain such joint department of animal husbandry, as herein provided, is hereby authorized, in its discretion, to set aside, appropriate and expend moneys from the general fund to help defray the expenses of maintaining a department of dairy husbandry, and the employment of a dairy husbandryman.

SOURCES: Codes, 1942, § 2965; Laws, 1938, ch. 318; Laws, 1940, ch. 276; Laws, 1950, ch. 189; Laws, 1986, ch. 400, § 6, eff from and after October 1, 1986.

§ 19-5-69. Funding of buildings for junior beef and dairy boys and girls.

The boards of supervisors of the various counties having livestock shows or associations located therein, and having a department of animal husbandry, as created under Section 19-5-67, and having a total assessed valuation of not exceeding Five Million Dollars ($5,000,000.00), are hereby authorized to donate funds not exceeding Ten Thousand Dollars ($10,000.00) or lands and materials not exceeding in value Ten Thousand Dollars ($10,000.00), and to otherwise aid and assist in the construction of buildings for the use of the junior beef boys and girls and the junior dairy boys and girls.

The board of supervisors of each county qualifying as above set forth is authorized and empowered to borrow a sum not exceeding Ten Thousand Dollars ($10,000.00) for the purpose of paying for such land, buildings or building material necessary to provide and construct buildings on livestock show grounds or other places selected by the board of supervisors.

The board of supervisors may apply for and receive contributions and allotments of funds, labor and materials from the federal government or any agency thereof, and may cooperate with such governmental agency in constructing the buildings herein authorized.

SOURCES: Codes, 1942, § 2965-01; Laws, 1946, ch. 432, §§ 1-3.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 23.

§ 19-5-71. Support of experiment stations.

The boards of supervisors of the several counties may, in their discretion, appropriate money from the general funds of the county for the purpose of buying lands, personal property, or equipment of whatever nature and kind, for experiment stations, and may appropriate money from said county funds to aid in the support and maintenance of such experiment stations, whether the same be located within or without the county. When any board of supervisors desire to appropriate funds as herein provided, they shall first publish notice of said proposed expenditure setting forth the amount thereof and the purposes for which said funds are to be used, and upon petition of ten per cent of the qualified electors in said county, the board shall submit to the qualified electors at a special election to be held in said county the question of whether or not said expenditure shall be made, and in the event the majority of the qualified electors shall vote against such expenditure, then the same shall not be made, and such proposal shall not again be made within twelve months from said election.

SOURCES: Codes, 1930, § 283; 1942, § 2981; Laws, 1928, ch. 220.

Cross References — Authority to construct and maintain roads into experiment stations, see § 65-7-73.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 23.

§ 19-5-73. Establishment of farmers' markets.

The board of supervisors of each county may expend monies from the general fund, not exceeding the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the county, for the purpose of providing funds to be expended to establish, maintain and operate farmers' markets and facilities that are certified by the Mississippi Department of Agriculture and Commerce and operating within the county to assist in the disposal and sale of farm and other food products in the interest of farmers, consumers and the general public.

SOURCES: Codes, 1942, § 2984.5; Laws, 1948, ch. 466, §§ 1-3; Laws, 1954, ch. 147, §§ 1, 2; Laws, 1986, ch. 400, § 7; Laws, 2012, ch. 467, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Markets and Marketing §§ 4, 5 et seq.

§ 19-5-75. Acquisition of cold storage plants, meat curing plants, warehouses, syrup blending plants, creameries, farm orchard and dairy produce establishments, by certain counties.

The board of supervisors of any county in the State of Mississippi bordering on the Mississippi Sound or Gulf of Mexico, or any county in Class 8 whose population is greater than 12,000 and less than 13,000, according to the census of 1940 and whose total area is 500 square miles, is hereby authorized, in its discretion, to borrow funds not to exceed Fifteen Thousand Dollars ($15,000.00), for the purpose of purchasing lands, buildings, building material, labor, machinery and equipment necessary to provide, construct, operate and maintain cold storage plants, meat curing plants, warehouses, syrup blending plants, creameries and establishments for handling, processing, selling or trading in farm orchard, and dairy products.

SOURCES: Codes, 1942, § 2975-01; Laws, 1944, ch. 251, § 1.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 189, 470 et seq., 478.

§ 19-5-77. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; lease of establishment.

The title to such property shall be taken in the name of the county and the board of supervisors may, upon such terms and conditions as may be fixed by said board by order spread upon its minutes, enter into agreements to lease such establishment to any cooperative association or other agency for use for the purposes enumerated in Section 19-5-75. Such lessee may, in addition to said purposes, use said establishment in performing the other functions of such cooperative association or agency.

SOURCES: Codes, 1942, § 2975-02; Laws, 1944, ch. 251, § 2.

Cross References — Agricultural associations generally, see §§ 79-17-1 et seq.
Cooperative marketing associations generally, see §§ 79-19-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 493 et seq.

§ 19-5-79. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; issuance of notes, bonds, or loan warrants.

Such board of supervisors may issue notes, bonds or loan warrants to evidence the amount borrowed for said purposes. Said notes, bonds or loan warrants shall bear such rate of interest as may be determined by the board of supervisors, not exceeding, however, six per cent per annum, payable semiannually. Said notes, bonds or loan warrants shall be in such denomination or denominations and form as may be determined by resolution or order of the board, and they shall be executed in behalf of the county by the president and clerk of said board. The interest to accrue on such notes, bonds or loan warrants on and prior to the respective maturity dates thereof shall be represented by coupons to be attached thereto and which may be executed by the facsimile signature of said officers. Said notes, bonds or loan warrants shall be made to mature over a period of not exceeding ten years, and shall be sold for not less than par and accrued interest.

SOURCES: Codes, 1942, § 2975-03; Laws, 1944, ch. 251, § 3.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 98, 155, 185.

CJS. 20 C.J.S., Counties §§ 398-429.

§ 19-5-81. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; notice of intention to borrow; election.

Before issuing the bonds, notes or loan warrants, authorized by Section 19-5-79 the board of supervisors shall publish notice of its intention to borrow such funds and to issue loan warrants, notes or bonds, and the clerk of said board shall publish in three weekly issues of some newspaper having a general circulation in the county, a copy of such order. If, within twenty-one days after the first publication of a copy of such order, twenty percent (20%) of the qualified electors of the county petition the board of supervisors for an election to determine whether or not the adoption of such order should be annulled, such election shall be ordered by said board of supervisors in which the qualified electors of the county shall be eligible to participate. If at such election a majority of those voting vote in favor of the adoption of such order the same shall be valid and effective, but if a majority shall vote against such order it shall be annulled and shall be ineffective. Such election shall be held and conducted and the returns thereof made as provided by law for other county elections. If no such petition be presented within twenty-one days after the first publication of a copy of such order, the order shall be valid and effective and said board may thereupon proceed to issue said loan warrants hereunder without an election on the question of the issuance thereof.

SOURCES: Codes, 1942, § 2975-04; Laws, 1944, ch. 251, § 4.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 117, 118, 126 et seq., 130 et seq., 133 et seq., 139 et seq.

§ 19-5-83. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; sections as full authority.

Sections 19-5-75 through 19-5-87, without reference to any other statute, shall be deemed full and complete authority for the issuance of said notes, bonds or loan warrants, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance of bonds, loan warrants or notes by boards of supervisors shall apply to the issuance and sale of loan warrants, bonds or notes under these sections. No proceedings shall be required for the issuance of such loan warrants, bonds or notes other than those provided for and required in these sections, and all powers necessary to be exercised by the board of supervisors, in order to carry out the provisions of these sections are hereby conferred.

SOURCES: Codes, 1942, § 2975-05; Laws, 1944, ch. 251, § 5.

§ 19-5-85. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; levy of taxes.

Said loan warrants, bonds or notes shall be general obligations of the county and the board of supervisors of said county shall annually levy a tax upon all taxable property therein sufficient to pay the principal of, and the interest on, such loan warrants, bonds or notes as the same mature and accrue, and the full faith, credit and resources of such county shall be and are hereby irrevocably pledged to the payment of same, both as to principal and interest.

SOURCES: Codes, 1942, § 2975-06; Laws, 1944, ch. 251, § 6.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 309, 311, 312.

§ 19-5-87. Acquisition of cold storage plants, meat curing plants, etc., by certain counties; validation of warrants, bonds or notes.

Said loan warrants, bonds or notes may, in the discretion of the board of supervisors, of such county, be validated under Sections 31-13-1 through 31-13-11.

SOURCES: Codes, 1942, § 2975-07; Laws, 1944, ch. 251, § 7.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 355 et seq.

§ 19-5-89. Promotion of youth activities.

The board of supervisors of any county in the State of Mississippi, in which there is located a national cemetery wholly supported by federal funds, and any county having a population of less than twenty thousand (20,000) in accordance with the 1950 census, with an area of less than four hundred twenty-five (425) square miles, and an assessed valuation on the basis of the 1950-1954 assessment rolls placing it in Class 5, is authorized to appropriate and expend, in its discretion, a sum not exceeding Five Hundred Dollars ($500.00) per annum, to be paid from the general fund of the county, for promoting and financing youth activities in the county, such as Little Boys Baseball, Inc., and other recreational activities for youth. This authority shall also extend to the board of supervisors of any county bordering on the Mississippi River and having an area of four hundred forty-eight (448) square miles with a population not in excess of thirty-two thousand five hundred (32,500) and a municipality therein with a population in excess of twenty-two thousand (22,000) and not more than twenty-three thousand (23,000), all in accordance with the federal census of 1950. Such authority shall also extend to any county having an assessed valuation of less than Five Million Dollars ($5,000,000.00), according to the 1960 federal census, and a portion of which lies in the DeSoto National Forest and having an area of less than four hundred fifty (450) square miles, which shall be authorized, in the discretion of the board of supervisors, to appropriate and expend not more than One Thousand Dollars ($1,000.00) per annum on youth activities. Such authority shall also extend to any city in which there is located a Baptist-supported college founded in 1826, which shall be authorized, in the discretion of the mayor and board of aldermen, to appropriate and expend not more than One Thousand Dollars ($1,000) per annum on youth activities within the city, such as Little League Baseball, Inc., the YMCA and other recreational activities for youth.

SOURCES: Codes, 1942, § 2965-05; Laws, 1958, ch. 227; Laws, 1962, ch. 250; Laws, 1977, ch. 305, eff from and after passage (approved February 24, 1977).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 181.

19 Am. Jur. Pl & Pr Forms (Rev), Parks, Squares, and Playgrounds, Forms 42.1, 45.1 (complaint and third-party complaint; player injured by foul ball).

§ 19-5-91. Agreements with the United States relative to navigation projects.

The board of supervisors of any county through any part of which any river or other stream may run, or any part of which any river or other stream may touch or border, on which the United States of America has authorized navigation projects, including channel clearing, channel improvement, cut-offs, levees, dams, or other navigation projects, is hereby authorized and empowered, for that part of such river or stream running through any part of said county or bordering or touching said county, as aforesaid, to give satisfactory assurances to the United States of America, or any agency thereof, including the Secretary of Defense, that it will:

(a) Provide, without cost to the United States, all lands, easements and rights-of-way necessary for the construction of the project;

(b) Hold and save the United States free from damages due to the construction of the works; and

(c) Maintain and operate all of the works after completion in accordance with regulations prescribed pursuant to the terms of any federal law relating to navigation or to navigable streams.

Any such board of supervisors is also hereby authorized and empowered to accept the conveyance of any lands, easements and rights-of-way over and on behalf of any lands that may be benefited by the maintenance of such works, to accept assurances from landowners whose property is benefited by such navigation projects, to levy, assess and collect such taxes on said area so benefited as will be necessary, to save and hold the United States free from all damages due to the construction of the works and to exercise the right of eminent domain for the condemnation of rights-of-way and easements in like manner as is exercised by boards of supervisors for the condemnation of public road rights-of-way, and to maintain such works in said county after completion and generally to accept agreements for landowners benefited by such navigation projects to save the county harmless on account of said assurances given by the county as aforesaid to the United States of America, or any agency there of, including the Secretary of Defense.

Any such board of supervisors also is authorized to enter into any contracts or agreements with the United States, or any agency or department thereof, to sponsor a project for the environmental restoration of a lake or body of water as described in, and in accordance with the provisions of Section 19-5-92.

SOURCES: Codes, 1942, § 2995.5; Laws, 1950, ch. 424, § 1; Laws, 2001, ch. 476, § 4, eff from and after passage (approved Mar. 23, 2001.)

Editor's Note — Laws, 2001, ch. 476, § 6, provides:
"SECTION 6. Nothing in this act shall be construed to require the prior approval of a levee board for the repair or construction of flood control structures in areas that are not located in a levee district area."

ATTORNEY GENERAL OPINIONS

Section 19-5-91 applies to the provision of lands, easements and rights of way necessary for the construction of "navigation projects". That section is not applicable to the provision of land and facilities to house the Coast Guard. Mullins, December 20, 1995, A.G. Op. #95-0795.

§ 19-5-92. Construction of dams and low-water control structures by counties; funding; federal and state assistance.

(1) Any county in the State of Mississippi is authorized to construct a dam or low-water control structure on any lake or natural body of water with an outlet or evidence of the flow or occurrence of water, including a lake or body of water located partially within the county and partially without the county or partially in another state adjacent or contiguous to the State of Mississippi. The county is authorized to use available funds from any source, including county ad valorem taxes, any available monies in the general fund of the county, funds from the issuance of bonds, donations, gifts or through inter-

agency agreements or interlocal cooperation for such funding, for the purpose of carrying out and accomplishing the following functions and activities:

(a) Construction of a dam or low-water control structure on such lake or body of water at such location as the county may deem most advantageous whether within or without the boundaries of the county or whether within or without the boundaries of the State of Mississippi, in whole or in part.

(b) Requesting and obtaining necessary assistance and input from, and coordinating the activities of, any state or federal agency or landowners for the purposes of carrying out and implementing necessary planning, permitting and funding requirements as well as all necessary and proper actions and agreements required of the county for the construction of such a dam or low-water control structure.

(c) Issuance of general obligation bonds in an amount not to exceed the aggregate principal amount of Two Hundred Fifty Thousand Dollars ($250,000.00) and management of the proceeds from such bond issue in accordance with the terms and provisions of Sections 19-9-1 through 19-9-31, and subject to the power and authority conferred upon boards of supervisors for the borrowing of money and for the pledging of the full faith and credit of the county.

(2) Any county in the State of Mississippi is authorized to make application to and contract with the United States or any agency or department thereof to sponsor a project or projects for the environmental restoration of such a lake or body of water, including participation as a local sponsor with the United States Army Corps of Engineers in evaluating and constructing water resources projects designed to enhance and restore water quality and habitat value in such lake or body of water, including:

(a) Coordinating activities and assistance of federal, state and local agencies and landowners for the purpose of carrying out and implementing necessary planning, permitting and funding requirements for construction and operation of such projects.

(b) Authorization to enter into project cooperation agreements with the United States Department of Army and to serve as nonfederal sponsors for such projects.

(c) Authorization to expend county funds, apply for, accept as a gift or receive through interagency agreement or interlocal cooperation, technical assistance, in-kind assistance, and acquisition of real estate or leasehold interest as may be necessary and appropriate for such project.

(d) Authorization to acquire in the name of the county through direct purchase or eminent domain procedures and to make available to the United States Department of Army all lands, easements, and rights-of-way required for the construction, implementation, operation and maintenance of such project, including, but not limited to, those required for utility relocations, borrow materials and dredged or excavated material disposal.

(e) Operation, maintenance, repair, replacement and rehabilitation of project features following the completion of such construction.

SOURCES: Laws, 2001, ch. 476, § 1, eff from and after passage (approved Mar. 23, 2001.)

Editor's Note — Laws, 2001, ch. 476, § 6 provides:
"SECTION 6. Nothing in this act shall be construed to require the prior approval of a levee board for the repair or construction of flood control structures in areas that are not located in a levee district area."

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

§ 19-5-92.1. Authority of counties to alter channels of streams and water courses; construction and repair of bridges; erosion prevention; property acquisition and easements; compensation to landowners; financing.

(1) The board of supervisors of any county, whenever the board determines that the health, comfort and convenience of the inhabitants of the county will be promoted, may:

(a) Alter and change the channels of streams or other water courses;

(b) Construct, reconstruct and repair bridges over streams and water courses; and

(c) Incur costs and pay necessary expenses for:

(i) Providing labor, materials and supplies to clean or clear drainage ditches, creeks or channels or conduits, both natural and man-made and to prevent erosion of such ditches, creeks or channels;

(ii) Acquiring property and obtaining easements necessary to perform work under this section; and

(iii) Reimbursing landowners for damages and injury resulting from work performed by the county under this section.

(2) The work performed and the expenses incurred under subsection (1) of this section may take place on public or private property. However, if the work is to be performed or the expenses to be incurred will take place on private property, the board of supervisors must:

(a) Make a finding, as evidenced by entry upon its minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the county;

(b) Give notice, in writing, to all owners of property that will be affected by the work for such period of time as is reasonable to allow such owners to express any objections;

(c) Not receive written objection to the work by any owners of property that will be affected by the work within the period of time allowed to express objections; and

(d) Unless otherwise agreed, in writing, by the county and the landowner, construct or install a culvert or bridge, at the county's expense, at an appropriate location or locations to provide the landowner ingress and egress to all of the property to which the landowner had access immediately before performance of the work by the county.

(3) The county shall reimburse landowners for all damages or injury resulting from work performed by the county under this section.

(4) The provisions of this section do not impose any obligation or duty upon a county to perform any work or to incur any expenditures not otherwise required by law to be performed or incurred by a county, nor do the provisions of this section create any rights or benefits for the owner of any public or private property in addition to any rights or benefits as may be otherwise provided by law.

(5) No additional taxes may be imposed for the work authorized under subsection (1) of this section until the board of supervisors adopts a resolution declaring its intention to levy the taxes and establishing the amount of the tax levies and the date on which the taxes initially will be levied and collected. This date shall be the first day of the month, but not earlier than the first day of the second month, from the date of adoption of the resolution. Notice of the proposed tax levy must be published once each week for at least three (3) consecutive weeks in a newspaper having a general circulation in the county. The first publication of the notice shall be made not less than twenty-one (21) days before the date fixed in the resolution on which the board of supervisors proposes to levy the taxes, and the last publication of the notice shall be made not more than seven (7) days before that date. If, within the time of giving notice, fifteen percent (15%) or two thousand five hundred (2,500), whichever is less, of the qualified electors of the county file a written petition against the levy of the taxes, then the taxes shall not be levied unless authorized by three-fifths (3⁄5) of the qualified electors of the county voting at an election to be called and held for that purpose.

SOURCES: Laws, 2002, ch. 504, § 1, eff July 3, 2002; Laws, 2004, ch. 381, § 1; Laws, 2006, ch. 321, § 1; Laws, 2011, ch. 349, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted “or conduits, both natural and man-made” preceding “and to prevent erosion of such ditches, creeks or channels” in (1)(c)(i).

ATTORNEY GENERAL OPINIONS

County may repair a culvert on private property to prevent future erosion, however, before undertaking the work, the board of supervisors must find, consistent with fact and spread upon the minutes, that the erosion at issue is caused by the county’s placement of the culvert under a public road. Chamberlin, Nov. 8, 2002, A.G. Op. #02-0604.

County may repair a culvert on private property to prevent future erosion, however, before undertaking the work, the board of supervisors must find, consistent with fact and spread upon the minutes, that the erosion at issue is caused by the county’s placement of the culvert under a public road. Chamberlin, Dec. 6, 2002, A.G. Op. #02-0660.

Supervisors serving as commissioners on the board of a solid waste management authority may accept compensation and reimbursement of expenses; however, care should be taken to ensure that there is no overlap between fulfilling the duties and responsibilities of a supervisor and those of a commissioner to avoid being paid twice for the same time worked. Fortier, Dec. 6, 2002, A.G. Op. #02-0650.

Stormwater ordinances allowing the county to enter private property to perform drainage work must comply with the provisions of Section 19-5-92.1. Nowak, Jan. 27, 2006, A.G. Op. 05-0637.

§ 19-5-93. Donations for certain patriotic and charitable uses.

The board of supervisors of each county is authorized, in its discretion, to donate money for the objects and purposes following, to wit:

(a) **Confederate graves.** For the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of said graveyards may be situated and also money or funds to be used for any of the purposes in this section expressed.

Any board of supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.

(b) **Care of the aged.** For the support and maintenance of such residents of the county who are worthy indigent aged inmates of the Old Ladies' Home of Jackson, Mississippi, or of the Golden Age Nursing Home and Hospital for North Mississippi of Greenwood, Mississippi, and not exceeding Five Hundred Dollars ($500.00) per annum for the support of the county's inmates of the Old Men's Home, located near Jackson, Mississippi, and in addition thereto a sum not exceeding Two Hundred Dollars ($200.00) per annum to each of said institutions for their support and maintenance in the care of the aged.

(c) **King's Daughters.** To the King's Daughters in their respective counties for charities under their supervision.

(d) **Travelers Aid Society.** A sum of money not exceeding Fifteen Dollars ($15.00) per month for the support of the organization known as the Travelers Aid Society, provided the same is nonsectarian.

(e) **Hospitals for pellagra sufferers.** For the establishment and maintenance of a hospital for the treatment of persons afflicted with pellagra. For this purpose the board may issue bonds and incur such indebtedness within the limits now authorized by law.

(f) **Tubercular hospitals.** For the establishment and maintenance of a hospital for the care and treatment of persons suffering from tuberculosis. In the execution of this power the board may select trustees to establish and operate said hospital. In counties having a population of more than forty thousand (40,000) people, as shown by the latest United States census, the board may set aside, appropriate and expend monies from the general fund for the purpose of aiding in the maintenance and support of hospitals maintained and operated in such county for the care and treatment of persons suffering from tuberculosis. The monies shall be expended by the board through such trustees, not less than three (3) and not more than five (5), to be elected by the board of supervisors annually. The trustees shall file reports with the board at least once every six (6) months showing in detail all expenditures made by them and the number of patients which have been for the preceding period aided or cared for by the institution, and the board may otherwise require a strict accounting of the administration of said funds.

(g) **Same — additional provisions.** The boards of supervisors of one or more counties are hereby authorized and empowered, in their discretion, separately or jointly, to acquire by gift, purchase or lease, real estate, for tubercular hospital purposes, and to own, erect, build, establish, maintain, regulate and support a tubercular hospital and to remodel buildings on such property to be used for such hospital purposes.

In the event the boards of supervisors of two (2) or more counties agree to cooperate in establishing and maintaining such hospital, the board of supervisors of each of said counties shall adopt a resolution agreeing to the proportionate part each county will contribute to the establishment and maintaining of such hospital.

Each county operating under the provisions of this subsection is hereby authorized and empowered to set aside, appropriate and expend monies from the general fund for the purpose of erecting, maintaining and operating such hospital.

(h) **Charity wards in hospitals.** A sum of money not exceeding One Hundred Dollars ($100.00) per month to maintain a charity ward or wards in any hospital in their respective counties, or in the event there shall be no hospital in such county, then a like sum, in their discretion, to maintain a charity ward or wards in any hospital in any adjoining county receiving and treating patients from such county having no hospital.

(i) **Same — coast counties.** The several counties of this state bordering on the tidewater of the Gulf of Mexico are hereby authorized and empowered, in the discretion of the proper authorities thereof, to appropriate such a sum of money as said authorities shall deem reasonable, to provide and maintain a charity ward or wards, in any of the hospitals in said counties, or, in the discretion of said authorities, to make and enter into contracts with any such hospitals for the treatment and care in such hospitals of the indigent sick of said counties, and to pay therefor out of the general fund of such counties such sum or sums as shall be a reasonable and just compensation to said hospital. However, the board of supervisors of any county mentioned herein may, in its discretion, make and enter into contracts with any hospital in any adjoining county receiving and treating patients from the respective counties mentioned herein in such hospitals of the indigent sick of said counties, mentioned herein, and to pay therefor out of the general fund of such county, such sum or sums that shall be reasonable and just to said hospitals.

(j) **Public libraries.** A sum not to exceed One Thousand Dollars ($1,000.00) per annum toward the support and maintenance of one or more public libraries situated in the county. In any county whose total assessed valuation, including railroads and all public utilities, is more than Eighteen Million Dollars ($18,000,000.00) the board, in its discretion, may appropriate a sum not to exceed Three Thousand Dollars ($3,000.00) per annum for public libraries.

The board may also give or donate any legislative journals, constitutional convention journals, printed official reports of any state or county officers, official reports of departments, bureaus or officers of the United States, and copies of the acts of the Legislature or laws of Mississippi now or hereafter in the county library of such county and not needed, in the opinion of the board in the county library (but not including any Mississippi reports and not including any acts of the Legislature or laws of the state, unless such acts or laws be more than twenty (20) years old) to any library or library association or foundation or organization maintaining a free public library for reference or otherwise, provided such library, association, foundation or organization owns free from encumbrance a fireproof library building located in this state, in which building said journals, reports, acts and laws may be and shall be deposited where received under this subsection and made accessible under reasonable regulations to the general public. Such library, association, foundation or organization shall not have the right to sell or otherwise dispose of said journals, reports, acts and laws. Said journals, reports, acts and laws may be returned to the county library from which received without expense to the county, or to the state library, without expense to the state, at any time by the library, association, foundation or organization receiving the same.

Any gift or donation made by the board of supervisors of any county under the authority of this subsection shall be evidenced by an order spread upon the minutes of said board. The county shall bear no expense in connection with any donation. The sheriff of the county, or the custodian of the county library, shall deliver to the representative of the library, association, foundation or organization entitled to receive the same any of said journals, reports, acts, laws and official publications in accordance with the directions contained in any order of the board of supervisors for the delivery of the same, and shall take proper receipt from the party receiving the same, and shall deliver such receipt to the clerk of the board of supervisors of the county, and the board of supervisors shall have the said receipt entered in full on the minutes of the board.

Any library, association, foundation or organization receiving any gift or donation from any county under this subsection shall report in writing to the board of supervisors, from which such gifts or donations have been received every two (2) years, that the gifts and donations so received are still in the possession of the donee and are accessible to the general public. If any of the gifts or donations so received have been lost, destroyed or have otherwise disappeared, report thereof shall be made.

If any library, association, foundation or organization receiving gifts or donations under this subsection shall cease operating as a free public library or shall cease to be the owner of a fireproof building in which it keeps and maintains a free public library, for reference or otherwise, the said library, association, foundation or organization shall thereupon immediately return to the county library, without expense to the county, or to the state library, without expense to the state, any gifts or donations it may have received under this subsection.

(k) **Patriotic organizations and memorials.** A sum not to exceed Five Thousand Dollars ($5,000.00) to build or aid any post of the American Legion, any chapter of the Daughters of the American Revolution, any chapter of the United Daughters of the Confederacy, or any post, unit or chapter of any patriotic organization within the county in building a memorial to the veterans of World War I and World War II; and a sum not to exceed One Thousand Dollars ($1,000.00) to aid in defraying the cost of the erection of suitable memorials to deceased soldiers, sailors and marines of the late world wars. Such appropriation may be made, even though no provision has been made therefor in the county budget.

(*l*) **American Red Cross.** Any board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually, out of any monies in its respective treasury, to be drawn by warrant thereon, a sum not exceeding One Hundred Dollars ($100.00) per million of assessed valuation to the support of a local chapter of the American Red Cross.

(m) **St. Jude Hospital.** For the payment of mileage expense for transporting persons to St. Jude Hospital in Memphis, Tennessee, for treatment. The mileage shall be based on a round-trip basis from the patient's place of residence to St. Jude Hospital at the mileage rate set forth in Section 25-3-41.

(n) **Public museums.** For the support and maintenance of such public museums located in the county constituted under the provisions of Chapter 9, Title 39, Mississippi Code of 1972.

(o) **Domestic violence shelters.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually out of any money in the county treasury, such sums as the board deems advisable to support any domestic violence shelter or rape crisis center operating within or serving its area. For the purposes of this section, "rape crisis center" means a place established to provide care, counseling and related services to victims of rape, attempted rape, sexual battery or attempted sexual battery.

(p) **Literacy programs.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate out of the general fund of the county such sum of money as the board deems reasonable to any literacy program being conducted within the county.

(q) **Care of neglected children.** The board of supervisors of any county in this state, in its discretion, may donate annually out of any money in the county treasury such sums as the board deems advisable to support any residential group home for the abused, abandoned or neglected children which operates within or serves the county. For the purposes of this paragraph the term "residential group home" means a group residence established to provide care and counseling, and to serve as a home, for children who are the victims of abuse, neglect or abandonment.

(r) **Boys and Girls Club.** To any chartered chapter of the Boys and Girls Clubs of America located within the county, out of any funds in the county treasury, provided that the cumulative sum of donations to all chapters within the county does not exceed the amount generated in the county by one-fourth (¼) mill on all of the taxable property within the county, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(s) **Mississippi Burn Care Fund.** To the Mississippi Burn Care Fund, subject to the limitations specified in Section 21-19-58.

(t) **Court Appointed Special Advocates.** To any chapter of the Court Appointed Special Advocates (CASA), out of any funds in the county treasury, provided that the cumulative sum of donations to a chapter does not exceed the amount generated in the county by one-fourth (¼) mill on all of the taxable property within the county, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(u) **National Voluntary Organizations Active in Disaster (NVOAD).** To a local chapter of NVOAD, whether in-kind contributions or out of any funds in the county treasury, provided that the cumulative sum of donations to a local NVOAD does not exceed the amount generated in the county by one-fourth (¼) mill on all of the taxable property within the county during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(v) **Farmers' Markets.** The board of supervisors of any county in this state, in its discretion, may donate annually out of any money in the county treasury, such sums as the board deems advisable to support any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the county, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the county.

SOURCES: Codes, Hemingway's 1917, §§ 3798, 3810, 3811; Hemingway's 1921 Supp. § 3811c; 1930, § 290 (a-l); 1942, § 2998; Laws, 1908, ch. 134; Laws, 1916, chs. 143, 235; Laws, 1918, ch. 205; Laws, 1920, ch. 289; Laws, 1928, chs. 233, 236; Laws, 1930, chs. 33, 56, 185; Laws, 1938, ch. 299; Laws, 1956, ch. 181; Laws, 1958, ch. 212; Laws, 1962, ch. 251; Laws, 1976, ch. 373; Laws, 1983, ch. 331, § 1; Laws, 1983, ch. 502, § 8; Laws, 1986, ch. 400, § 8; Laws, 1990, ch. 318, § 1; Laws, 1990, ch. 539, § 2; Laws, 1995, ch. 358, § 1; Laws, 2009, ch. 415, § 2; Laws, 2011, ch. 461, § 2; Laws, 2012, ch. 467, § 3, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last paragraph in (j). The words "operating as free public library" were changed to "operating as a free public library". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Amendment Notes — The 2011 amendment added (t) and (u).

The 2012 amendment added (v).

Cross References — Duty of Legislature to provide for care of indigent sick, see Miss Const. Art. 4, § 86.

Golden Age Nursing Homes, see §§ 19-5-31 et seq.

Establishment and operation of libraries, see §§ 39-3-3, 39-3-5.

Construction of articles, see § 39-3-23.

The interstate library compact, see §§ 39-3-201 et seq.

Domestic violence shelters, generally, see §§ 93-21-101 et seq.

Penalty for unauthorized use of emblems of fraternal organizations, societies, etc., see § 97-19-43.

JUDICIAL DECISIONS

1. In general.

County cannot appropriate money to private corporation. Brister v. Leflore County, 156 Miss. 240, 125 So. 816 (1930).

ATTORNEY GENERAL OPINIONS

The Board of Supervisors of a county cannot grant any donations of public funds or county office and parking space to private non-sectarian charities that are not expressly statutorily enumerated. Walters, Mar. 18, 1992, A.G. Op. #91-0168.

County board of supervisors has no apparent authority to contribute funds for utilities and insurance for building owned by city and leased to non-profit organization which uses it as community center. Cossar, Nov. 25, 1992, A.G. Op. #92-0889.

Although a Drug Task Force may not make a donation of funds or property, the counties and cities making up the Task Force may contribute funds to a domestic violence shelter as they see fit under Sections 19-5-93(o) and 93-21-115. Pacific, June 28, 1995, A.G. Op. #95-0329.

Section 19-5-93 gives the board of supervisors of each county the discretionary authority to make donations for certain purposes; however, there appears to be no authority for the board to make a donation to a private nonprofit corporation. Meek, October 11, 1995, A.G. Op. #95-0644.

The statute does not include the Boy Scouts or the Girl Scouts among the organizations to which county supervisors may donate funds. Carnathan, Oct. 27, 2000, A.G. Op. #2000-0649.

Subsection (q) specifically authorizes counties to make donations to any residential group home for abused, abandoned, or neglected children, and the authority to donate includes the authority to perform and donate the value of in-kind services. Smith, Mar. 9, 2001, A.G. Op. #01-0121.

If a county-owned residential group home for children is closed, any funds existing which are not necessary to satisfy any debts related to its operation may, in the discretion of the county board of supervisors, be transferred to the non-profit corporation, either as consideration of the services to be provided, or as a donation. Barry, Nov. 9, 2001, A.G. Op. #01-0662.

The authority to donate includes the authority to perform and donate in-kind services and, therefore, a county board of supervisors who contracted with a Mississippi nonprofit corporation to provide professional services as a residential group home, could use its equipment and labor to construct a private drive on the property of the nonprofit corporation to provide ingress/egress to it from a public street. Barry, Mar. 29, 2002, A.G. Op. #02-0143.

A county board of supervisors lacks authority to approve a request for a grant submitted by a health service organization that is a proprietorship and not a governmental entity. Dulaney, Sept. 27, 2002, A.G. Op. #02-0563.

Y-CAP, a division of the YMCA, is not a residential group home as defined by Section 19-5-93(q). Jewell, May 9, 2003, A.G. Op. 03-0206.

Because the shelter established by Interfaith Hospitality is not a residential group home as defined by Section 19-5-93(q), therefore, a county board of supervisors does not have the authority to appropriate funds to that organization. Meadows, May 23, 2003, A.G. Op. 03-0221.

A county board of supervisors does not have the authority under this section to appropriate funds to provide financial assistance to a homeless shelter operated by a private non-profit corporation. O'Donnell, July 18, 2003, A.G. Op. 03-0307.

Assistance of a county board of supervisors in the demolition of a part of building and hauling away the debris to aid an early head start center is not a donation within the purview of subsection (p) of this section. Entrekin, July 18, 2003, A.G. Op. 03-0323.

There is no authority for a board of supervisors to make a donation to a private nonprofit corporation. McWilliams, Aug. 8, 2003, A.G. Op. 03-0404.

A board of supervisors could not assist a non-profit public purpose corporation in the removal of existing concrete slab foundations on their property. McWilliams, Aug. 22, 2003, A.G. Op. 03-0370.

Nothing in the section authorizes contributions for a private community action agency. Welch, May, 6, 2004, A.G. Op. 04-0174.

No authority is provided by this section for a county to donate funds to a park owned by a private, non-profit corporation. However, a county may lease property for a public park and/or contract for operations of a public park. Chamberlin, Aug. 13, 2004, A.G. Op. 04-0318.

Where transfer of title to a building by a company to a county is followed by temporary retention of possession by the donating company, and the eighteen month possession of the building by the company is presumably far less than the building's appraisal value, therefore, the possession of the building after transfer would not be an impermissible donation. Crow, Dec. 8, 2006, A.G. Op. 06-0583.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 62, 71, 75.

§ 19-5-95. Aid to fire departments.

The board of supervisors of any county in this state is hereby empowered and authorized to appropriate out of the county treasury annually a sum not in excess of Two Hundred Fifty Dollars ($250.00) in aid of any fire department for services and protection by such fire department, and, in its discretion, to appropriate out of the county treasury annually a sum not in excess of the amount which would be produced by a levy of one-fourth (¼) mill on all taxable property within the county in aid of municipal fire departments in the county, or in aid of volunteer fire departments within the county which meet the requirements set forth in Section 83-1-39(2), but in no event shall the aggregate amount appropriated annually under this section exceed an amount equal to the amount which would be produced by a levy of one-fourth (¼) mill on all taxable property within the county.

SOURCES: Codes, 1906, § 370; Hemingway's 1917, § 3743; 1930, § 234; 1942, § 2912; Laws, 1904, ch. 101; Laws, 1930, ch. 24; Laws, 1981, 1st Ex Sess, ch. 7, eff from and after passage (approved August 27, 1981).

Cross References — Fire truck acquisition assistance program, see §§ 19-23-1. "County volunteer fire department fund," see § 83-1-39.

ATTORNEY GENERAL OPINIONS

Insurance for volunteer fire department trucks may be paid out of insurance rebate monies paid to the private nonprofit volunteer fire departments in accordance with "fire protection service contracts" and the requirements of Section 83-1-39(6). See also, Section 19-5-95. Breland, February 15, 1995, A.G. Op. #95-0020.

An appropriation authorized under Section 19-5-95 may not be appropriated from the Road and Bridge Maintenance Fund. Meek, January 5, 1996, A.G. Op. #95-0858.

A county supervisor can not pay a yearly amount to a volunteer fire department for maintenance and upkeep of the grounds, although the board of supervisors can do so. Farese, April 17, 1998, A.G. Op. #98-0203.

A county may not purchase property damage insurance on equipment and/or vehicles owned by the county volunteer fire departments through the use of the county's general fund or the county volunteer fire departments fund. Creekmore, Nov. 30, 2004, A.G. Op. 04-0560.

There is no express authority for a county to directly reimburse volunteer firemen for mileage in responding to fires within the county. However, the proceeds from the fire protection service contract may be used by a county fire district to reimburse volunteer firemen for mileage in responding to fires within the county. Mills, Nov. 30, 2004, A.G. Op. 04-0564.

§ 19-5-97. Purchase, operation and maintenance of fire trucks and other fire fighting equipment.

The board of supervisors of any county who find that the public interest of the county, or any supervisors' district or districts within the county, will be conserved thereby, may purchase, operate, and maintain fire trucks, pumps, tanks, trailers, fire hose, fire extinguishers, and other fire fighting equipment, and may contract with one or more towns or municipalities in the county for keeping and storing same, or any part of same, and assisting in the use and operation thereof. Such board may pay its part of the cost of such purchasing, operation and maintenance from the general fund of the county if the entire county participates in the provisions of this section, or from a special fund to be known as the "Fire Prevention Fund" if less than all five districts participate. The board is empowered to authorize the participation of either the entire county or any district or districts whose public interests will be conserved thereby.

SOURCES: Codes, 1942, § 2912.3; Laws, 1968, ch. 283, § 1, eff from and after passage (approved June 21, 1968).

Cross References — Fire truck acquisition assistance program, see §§ 19-23-1.
County volunteer fire department fund, see § 83-1-39.

ATTORNEY GENERAL OPINIONS

A county may establish a fire department, regardless of whether it is a paid department or a volunteer department; a county-established volunteer fire department need not be incorporated, but may act as an arm of county government. Clements, Apr. 5, 2002, A.G. Op. #02-0108.

Personnel decisions regarding a county fire department, including hiring, firing and disciplinary matters, must be performed in accordance with procedures adopted by the county in its countywide personnel system. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

A county fire department does not have jurisdiction within the boundaries of municipalities since, pursuant to Section 21-25-3, a municipality has a duty to provide fire protection within the corporate limits. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

A county fire department must first obtain approval of an interlocal agreement in accordance with Sections 17-13-1 et seq., before it may provide fire protection services in an area served by a fire protection district established pursuant to Sections 19-5-151 et seq. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

A county fire department, and by extension the board of supervisors, would not have the authority to render fire protection services in an area currently served by a fire protection district. The county could enter into an interlocal agreement to assist the district when requested. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

No provision of state law can be found prohibiting the use of county general funds to fund a county fire department. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

A county would be authorized to use the tax revenue generated by Section 83-1-39(5)(d) to fund a county fire department. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

A county fire department would be authorized to receive a portion of fire insurance rebate money. Nowak, Aug. 4, 2006, A.G. Op. 06-0325.

§ 19-5-99. Establishment of economic development districts.

(1) Subject to the provisions of Section 19-9-111, the board of supervisors of any county in the State of Mississippi, in its discretion, by order duly entered on its minutes, may establish economic development districts comprising all of the county, or one or more supervisors districts of the county, or may establish such economic development districts in cooperation with one or more other counties or with municipalities or with other local and private economic development groups. The board of supervisors may do everything within its power to secure and further industrial development of the county or counties or district, to advertise the natural resources and possibilities of the same, and to maintain and support the same.

All monies collected for the support and maintenance of such economic development district, in accordance with the tax levy provided in Section 19-9-111, shall be placed in the county treasury to the credit of the county or district economic development fund and shall be expended as other public funds are expended, and in which event the employees of such economic development district shall be employees of the county and considered as such. In addition to such funds provided by taxation, the board of supervisors of such county may accept gifts, gratuities and donations from municipalities in such districts and from any persons, firms or corporations desiring to make such donations. Such appropriation, gift or donation shall also be placed in the county treasury and be expended in the support and maintenance of such district.

At the option of such board of supervisors, or boards of supervisors if more than one (1) county is embraced in such economic development district, it may provide for the management of such economic development district by appointing not more than twenty-five (25) nor less than five (5) trustees, or if a multicounty district not more than five (5) trustees per participating county, who shall be qualified electors residing within such economic development district, to manage the affairs of such district, and in which event the funds made available by the county or counties for the support and maintenance of such economic development district may be expended by a majority vote of such trustees so appointed to manage such economic development district. Each trustee who is an officer of the economic development district shall qualify by giving bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to Fifty Thousand Dollars ($50,000.00), the premiums on all such surety bonds being paid by such economic development district. If this option is exercised and such districts operated and maintained under this paragraph, then in such event the employees of such economic development district shall not be considered as employees of the county for state retirement or any other purposes.

All funds secured and expended under the provisions of this section shall be public funds and the Auditor of Public Accounts of the State of Mississippi shall audit the same as other public funds are now audited.

Notwithstanding any provision of this section to the contrary, the board of supervisors of a county having therein an economic development district established under this section or any other law and the governing authorities of any municipality located within the economic development district in such county may enter into a contract providing for the contribution of funds by the municipality or other local and private economic development groups to the economic development district and providing for the appointment by the municipal governing authorities or other local and private economic development groups of a number of trustees, as determined by the parties to the contract, to assist in the management of the district. In like manner, any economic or industrial development foundation or private economic development group may enter into a contract with the board of supervisors of the county or jointly with the board of supervisors of the county and municipal governing authorities providing for the contribution of funds by the economic or industrial development foundation or private economic development group to the economic development district and providing for the appointment by the officials or governing board of the foundation of a number of trustees, as determined by the parties to the contract, to assist in the management of the district.

(2) Any economic development district established under this section may, when suitable office space is not otherwise available, purchase and acquire title to real estate within the district and make any improvements thereon to provide the office space it considers necessary for efficient operation of such district. Provided, however, that no contract or agreement for the exclusive listing, sale or representation for sale of publicly owned property shall be entered into by such economic development districts with any real estate broker or brokers.

(3)(a) Any economic development district established under this section shall have the authority to acquire by gift, purchase or otherwise, and to own, hold, maintain, control and develop real estate situated within the county or counties comprising such district for the development, use and operation of industrial parks or other industrial development purposes. The district is further authorized and empowered to engage in works of internal improvement therefor including, but not limited to, construction or contracting for the construction of streets, roads, railroads, spur tracks, site improvements, water, sewerage, drainage, pollution control and other related facilities necessary or required for industrial development purposes or the development of industrial park complexes; to acquire, purchase, install, lease, construct, own, hold, equip, control, maintain, use, operate and repair other structures and facilities necessary and convenient for the planning, development, use, operation and maintenance of an industrial park or parks or for other industrial development purposes, including, but not limited to, utility installations, elevators, compressors, warehouses, buildings and air, rail and other transportation terminals and pollution control facilities.

(b) Contracts for the construction, improvement, equipping or furnishing of an industrial site and improvements thereon as authorized in this section shall be entered into upon the basis of public bidding under Section 31-7-1 et seq.

(4) For the development of such projects, the board of supervisors of any county that establishes an economic development district under this section or that establishes an economic development district in cooperation with one or more other counties, or municipalities or other local and private economic groups, may, upon receipt of a resolution duly adopted by the trustees of such district, issue, secure and manage its bonds in the manner prescribed by Sections 19-9-5, 19-9-7, 19-9-9, 19-9-11, 19-9-13, 19-9-15, 19-9-17, 19-9-19, 19-9-21, 19-9-23, 19-9-25 and 19-9-29. Such bonds shall be sold in accordance with the provisions of Section 31-19-25. The full faith, credit and resources of the county shall be irrevocably pledged for the payment of the principal of and interest on the bonds issued under this section. Any income derived from the sale or lease of the property authorized to be acquired under this section shall be applied in one or more of the following manners: (a) the retirement of bonds authorized to be issued under this section; (b) further improvement or development of such industrial parks or other related industrial development activities; or (c) payment into the general fund of the county to be used for any lawful purpose. Any amounts so paid into the general fund shall be included in the computation of total receipts and subject to the restrictions of Section 27-39-321. The board of supervisors may covenant with or for the benefit of the registered owners of any bonds issued under this section with respect to the application of any or all of such income and shall, by resolution adopted before or promptly after receipt of any such income, determine, in its discretion subject only to the restrictions set forth above and any covenants made to or for the benefit of any registered owners of bonds issued under this section, the manner in which such income shall be applied.

The bonds authorized by this section and the income therefrom shall be exempt from all taxation in the State of Mississippi; however, any lessee or purchaser shall not be exempt from ad valorem taxes on industrial sites and improvements thereon unless otherwise provided by the general laws of this state, and purchases required to establish the project and financed by bond proceeds shall not be exempt from taxation in the State of Mississippi.

(5) Economic development districts established under this section are authorized and empowered:

(a) To sell, lease, trade, exchange or otherwise dispose of industrial sites or rail lines situated within industrial parks to individuals, firms or corporations, public or private, for industrial and warehouse use upon such terms and conditions, and for such considerations, with such safeguards as will best promote and protect the public interest, convenience and necessity, and to execute deeds, leases, contracts, easements and other legal instruments necessary or convenient therefor. Any industrial lease may be executed by the district upon such terms and conditions and for such monetary rental or other considerations as may be found to be in the best interest of the public, upon an order or resolution being spread upon the minutes of the district authorizing same.

(b) To sue and be sued in their own name.

(c) To fix and prescribe fees, charges and rates for the use of any water, sewerage, pollution control or other facilities constructed and operated in connection with an industrial park or parks and to collect same from persons, firms and corporations using the same for industrial, warehouse and related purposes and are further empowered to deny or terminate such services for nonpayment of said fees, charges or rates by the users of said services.

(d) To employ engineers, attorneys, accountants, consultants, licensed real estate brokers and appraisers, and such executive and administrative personnel as shall be reasonably necessary to carry out the duties and authority authorized by this section with funds available for such purposes. Such districts may also contribute money directly to the development and cost of operation of any industrial development foundation or other private economic development group in the county.

(6) Any county board of supervisors authorized to issue bonds under this section is hereby authorized, either separately or jointly with the governing authority of any municipality within the county, to acquire, enlarge, expand, renovate or improve an existing building or buildings located in the county or municipality and to issue bonds for such purpose in the manner provided by this section.

(7) Economic development districts established under the provisions of a local and private act enacted before July 1, 1997, are authorized and empowered to employ engineers, attorneys, accountants, consultants, licensed real estate brokers and appraisers, and such executive and administrative personnel as shall be reasonably necessary to carry out the duties and authority authorized by this section, or by such local and private act, with funds available for such purposes.

(8) The enumeration of any specific rights and powers contained in this section where followed by general powers shall not be construed in a restrictive

sense, but rather in as broad and comprehensive a sense as possible to effectuate the purposes of this section.

SOURCES: Codes, 1942, § 2911.3; Laws, 1960, ch. 187.5; Laws, 1962, ch. 254, §§ 1-5; 976, ch. 439; Laws, 1978, ch. 451, § 1; Laws, 1983, ch. 539; Laws, 1984, ch. 495, § 13; Laws, 1985, ch. 441, § 1; reenacted and amended, 1985, ch. 474, § 22; Laws, 1986, ch. 304; Laws, 1986, ch. 438, § 7; Laws, 1986, ch. 458, § 17; Laws, 1987, ch. 483, § 12; Laws, 1988, ch. 442, § 9; Laws, 1988, ch. 458; Laws, 1989, ch. 537; Laws, 1990, ch. 518, § 9; Laws, 1991, ch. 618, § 9; Laws, 1992, ch. 491 § 10; Laws, 1993, ch. 425, § 1; Laws, 1994, ch. 423, § 1; Laws, 1997, ch. 492, § 1, eff from and after July 1, 1997.

Editor's Note — Laws of 1986, ch. 458, § 48, provided that § 19-5-99 would stand repealed from and after October 1, 1989. Subsequently, Laws of 1986, chapter 458, § 48, was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — County and municipal appropriations to planning and development districts, see § 17-19-1.

Industrial parks or districts generally, see §§ 57-5-1 et seq.

Development of airport land, or other land, for industrial purposes, see §§ 57-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

Economic development districts are not prohibited to enter into a "lease intended for security," where such terms are in the best interests of the public and serve a public purpose. American Gen. Aircraft Corp. v. Washington County Economic Dev. Dist., 190 B.R. 275 (Bankr. N.D. Miss. 1995).

ATTORNEY GENERAL OPINIONS

Legislature intended to allow Economic Development District to equip building with industrial equipment as part of incentive in developing and promoting industry in industrial park; proceeds from bond issue may be used for purpose of acquiring project. Younger, June 18, 1990, A.G. Op. #90-0410.

Governing authority for Copiah County Economic Development District has requisite authority to acquire manufacturing facility after its construction, and authority to lease facility back to industry without solicitation of competitive bids. Bourgeois, Sept. 25, 1990, A.G. Op. #90-0702.

Unexpended proceeds from Bond and Interest Fund may not be transferred to Construction Fund created under bond resolution and used for costs of locating new industry on purchased land. Harris, August 12, 1992, A.G. Op. #92-0562.

An economic development district, under 19-5-99, is a conduit for the administration of local funds. An economic development district does not have authority to forgive a debt. Elliott, May 18, 1995, A.G. Op. #95-0311.

A municipality may make a donation under Section 19-5-99 to an economic development district without first presenting the issue to taxpayers. Horne, June 28, 1996, A.G. Op. #96-0329.

Section 19-5-99 authorizes gifts, gratuities and donations from municipalities, people, firms or corporations, but does not limit the type or amount of any such donation. Horne, June 28, 1996, A.G. Op. #96-0329.

If the County Industrial Board is established under Section 19-5-99 which allows counties to establish economic development districts, then the county board of supervisors has the power to accept gifts, gratuities and donations from municipalities in such districts and from any persons, firms or corporations desiring to make such donations. Such appropriation, gift or donation shall also be placed in the county treasury and be expended in the support and maintenance of such district. Reeves, December 6, 1996, A.G. Op. #96-0769.

Other than specific situations specified by statute, there is no statutory authority which would permit a municipality to enter into an interlocal agreement with a county whereby the two entities could jointly carry out the flood control and drainage activities on the described property; the best course of action may be for the city and county to pursue local and private legislation approving the property in question as an industrial park and authorizing the work necessary to address the potential flooding issue. Prichard, January 15, 1998, A.G. Op. #97-0784.

Quitman County may acquire property from a school district that it will in turn convey to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

Where the Lauderdale County Economic Development District furnishes materials, or funds to furnish materials, the city has authority to provide labor and equipment to perform work in a public right-of-way so long as the city supervises and controls the project. Hammack, April 3, 1998, A.G. Op. #98-0153.

A board of supervisors may, upon a finding of fact consistent with Miss. Code Section 19-7-3, encompassed in an order spread upon its minutes, lease real property without consideration to an economic development district created by a board of supervisors pursuant to Section 19-5-99. Webb, May 15, 1998, A.G. Op. #98-0246.

Trustees of an economic development district created pursuant to the statute do not have to submit every decision or expenditure to the board of supervisors for approval; funds in the county treasury for the use and benefit of the economic development district are subject to the decisions of the trustees without prior approval of the supervisors. Walley, March 19, 1999, A.G. Op. #99-0124).

Economic development districts created pursuant to this section are subject to the public purchasing laws codified at §§ 31-7-1 et seq. Walley, March 19, 1999, A.G. Op. #99-0124.

Subsection (5)(d) of this section allows an economic development district to not only hire employees but to pay them compensation and to provide for them health insurance and retirement or pension benefits. Walley, April 23, 1999, A.G. Op. #99-0157.

A county board of supervisors may only establish and construct a jail upon land owned by the county itself in fee simple, and may not establish and construct a jail upon land belonging to an economic development district even though the economic development district was created by and is a subdivision of the county. Smith, April 7, 2000, A.G. Op. #2000-1080.

A county may not issue bonds or use bond proceeds to equip or retrofit equipment for a facility located in another county. Clements, Apr. 6, 2001, A.G. Op. #01-0160.

As long as acquisition of an existing building by an economic development district is for one of the enumerated purposes stated in subsection (3)(a) of this section, there is no statutory requirement for solicitation of competitive bid; however, a district may not avoid the bidding requirements of subsection (3)(b) of this section by conveying property to an economic development association partially funded by it and then repurchasing the property after the association has constructed a building on it. Webb, Sept. 20, 2002, A.G. Op. #02-0520.

The board of aldermen of a city may lease property to an economic development district without consideration; however, the lease is voidable at the option of the next board of aldermen. Phillips, Apr. 25, 2003, A.G. Op. 03-0189.

A city may donate real property and/or real property containing an industrial building to an economic development district created pursuant to Section 19-5-99 without payment of consideration. Phillips, Apr. 25, 2003, A.G. Op. #03-0189.

There is no authority for an economic development district created by a county board of supervisors to donate the use of property received from the city to a private industry without consideration. Phillips, Apr. 25, 2003, A.G. Op. #03-0189.

If an economic development district finds and spreads upon its minutes a determination that consideration which is less than the appraised value and less that the total amount invested in a site is good and valuable consideration and would best promote and protect the public interest, then transfer of the site to a private industry is permissible. Lawrence, May 30, 2003, A.G. Op. 03-0230.

A site obtained by means of general obligation bonds may be transferred while these bonds are still outstanding; however, the proceeds of the proposed lease/sale must be applied to the retirement of the bonds pursuant to Section 19-5-99. Lawrence, May 30, 2003, A.G. Op. 03-0230.

A county economic development authority may not sponsor a political rally. White, July 11, 2003, A.G. Op. 03-0329.

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. McLeod, Nov. 26, 2003, A.G. Op. 03-0573.

If a board of supervisors itself elects to manage an economic development district, then the board may hire a director who would be a county employee. Fortier, Apr. 2, 2004, A.G. Op. 04-0115.

If a board of supervisors creates an economic development district and chooses to appoint trustees to manage the district, then any director hired by the trustees would not be a county employee. Fortier, Apr. 2, 2004, A.G. Op. 04-0115.

If a board of supervisors elects to manage an economic development district itself, then the board may assign the director of the district to work with a county development foundation if the board finds, as reflected by an order entered on the minutes, that it is necessary to fulfill the purposes of this section. Fortier, Apr. 2, 2004, A.G. Op. 04-0115.

An economic development district may donate a piece of property in the district's industrial park, owned by the economic development authority, to a new industry that will be constructing a processing plant with its own funds. However, the district may, upon a finding of fact encompassed in an order spread upon its minutes, transfer the property to the industry upon such terms and conditions as it determines constitute good and valuable consideration and best promotes and protects the public interest. Williams, May 21, 2004, A.G. Op. 04-0196.

Funds received from the sale of property owned by a county economic development district may be transferred into the general fund of the county to be used for any lawful purpose as set forth in subdivision (4)(c) of this section when there is no bonded indebtedness on the property. Webb, Nov. 5, 2004, A.G. Op. 04-0523.

There is no statutory authority for an economic development district to set up a non-profit corporation to accept donations. McMillan, Nov. 19, 2004, A.G. Op. 04-0558.

Governing authorities of a city and county could lease a building owned by an economic development district for general governmental purposes until needed for an industrial development purpose. Allen, Apr. 11, 2006, A.G. Op. 06-0052.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 184.

§ 19-5-101. Establishment of juvenile residential treatment centers.

The board of supervisors of each county shall have the power to expend monies from the county general fund to match any other funds for the purpose of establishing juvenile residential treatment centers including, but not limited to, treatment centers and half-way houses.

SOURCES: Codes, 1942, § 7185-31; Laws, 1972, ch. 514, § 1, eff from and after passage (approved May 22, 1972).

Cross References — Establishment of residential treatment centers, see § 21-19-65.

RESEARCH REFERENCES

ALR. Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoinable nuisance. 21 A.L.R.3d 1058.

Am Jur. 8 Am. Jur. Pl & Pr Forms (Rev), Death, Form 8.1 (complaint, petition or declaration — action against halfway house — wrongful death due to inadequate supervision of inmate).

§ 19-5-103. Regulation of massage parlors and public displays of nudity.

(1) In accordance with the provisions of Section 19-3-4l, providing that additional powers may be conferred upon the boards of supervisors, the board of supervisors of any county bordering on the Gulf of Mexico and having two (2) judicial districts and the board of supervisors of any county adjacent to any county of this or any adjoining state wherein is located a city having a population in excess of two hundred thousand (200,000), according to the latest federal census, are hereby empowered to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to the advertisement, the offering of services and the dispensation for compensation of personal services in establishments known as massage parlors and to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to public displays of nudity.

(2) For the purposes of this section, the term "massage parlor" shall mean any premises where a person manipulates, rubs, caresses, touches, massages, kneads, palpates or otherwise physically contacts the body or part or area of the body of another person. The term "massage parlor" shall not include gymnasia or other premises wherein persons engage in bona fide athletic or conditioning activities, duly licensed barbershop, beauty parlor, chiropractic clinic or other premises of a person practicing a vocation or profession regulated and licensed by the state.

For the purposes of this section, the term "nudity" means uncovered, or less than opaquely covered, postpubertal human genitals, pubic areas, the postpubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are uncovered, however, the term "nudity" does not include a woman's breast-feeding of her child whether or not the breast or any part of it is exposed as any element of breast-feeding.

For the purposes of this section, the term "public display" means the exposing, exhibiting, revealing, or in any fashion displaying the nude human body or any representation thereof in any location in such a manner that it may be readily seen by the public by normal unaided vision and the term also means any play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity or sexual conduct.

(3) Ordinances adopted pursuant to this section shall comport with the elements of due process and shall include but not be limited to specificity, adequate notice, right to hearing, right to counsel, right to appeal adverse findings to a judicial authority and penalties rationally related to prohibited acts.

(4) Boards of supervisors proposing such ordinances shall publish and post notice of such intentions not less than twenty (20) days prior to the holding of a public hearing whereat the purposes and substance of such ordinances shall be fully discussed.

SOURCES: Laws, 1977, ch. 460; Laws, 1981, ch. 331, § 1; Laws, 2006, ch. 520, § 4, eff from and after passage (approved Apr. 3, 2006.)

Cross References — Authority of board of supervisors to promulgate, adopt and enforce ordinances to regulate establishments where public displays of nudity are present, see § 19-5-104.

Cleaning private property generally, see § 21-19-11.

Crimes against public morals and decency generally, see §§ 97-29-1 et seq.

Strip clubs prohibited within one-fourth mile of church, school, kindergarten, or courthouse, see § 97-29-65.

RESEARCH REFERENCES

ALR. Regulation of masseurs. 17 A.L.R.2d 1183.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Validity and construction of statute or ordinance forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 A.L.R.3d 936.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Am Jur. 10 Am. Jur. Trials, Obscenity Litigation §§ 1 et seq.

§ 19-5-104. Regulation of establishments where public displays of nudity are present.

(1) In accordance with the provisions of Section 19-3-41, providing that additional powers may be conferred upon the board of supervisors of any county, the board of supervisors of any county are hereby empowered to promulgate, adopt and enforce ordinances which are necessary and reasonable for the regulation of establishments where public displays of nudity are present.

(2) For the purposes of this section the terms "nudity" and "public display" shall have the same meanings as those terms are defined in Section 19-5-103.

(3) Ordinances adopted pursuant to this section shall comport with the elements of due process and shall include, but not be limited to, specificity, adequate notice, right to hearing, right to counsel, right to appeal adverse findings to a judicial authority and penalties rationally related to prohibited acts.

(4) Boards of supervisors proposing such ordinances shall publish and post notice of such intentions not less than twenty (20) days prior to the holding of a public hearing whereat the purposes and substance of such ordinances shall be fully discussed.

SOURCES: Laws, 2010, ch. 355, § 1, eff from and after July 1, 2010.

Cross References — Regulation of massage parlors and public displays of nudity, see § 19-5-103.

§ 19-5-105. Cleaning private property; notice to property owner; hearing; lien.

To determine whether property or a parcel of land located within a county is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, the board of supervisors of any county is authorized and empowered to conduct a hearing on its own motion, or upon the receipt of a petition requesting the board of supervisors to act signed by a majority of the residents eighteen (18) years of age or older, residing upon any street or alley, within reasonable proximity of any property alleged to be in need of cleaning, or within seven hundred fifty (750) feet of the precise location of the alleged menace situated on any parcel of land which is located in a populated area or in a housing subdivision and alleged to be in need of cleaning.

Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at the county courthouse or another place in the county where such notices are posted.

The notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the board of supervisors to reenter the property or parcel of land for a period of one (1) year after the hearing without any further hearing, if notice is posted on the property or parcel of land and at the county courthouse or another place in the county where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the board of supervisors in conjunction with the hearing required by this section.

If at such hearing the board of supervisors shall in its resolution adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community, the board of supervisors may, if the owner not do so himself, proceed to have the land cleaned by cutting weeds, filling cisterns, and removing rubbish, dilapidated fences, outside toilets, dilapidated buildings and other debris, and draining cesspools and standing water. Thereafter, the board of supervisors may at its next regular meeting by resolution adjudicate the actual cost of cleaning the land and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty shall become an assessment against the property. The "cost assessed against the property" means either the cost to the county of using its own employees to do the work or the cost to the county of any contract executed by the county to have the work done, and administrative costs and legal costs of the county.

A county may reenter the property or parcel of land to maintain cleanliness without further notice of hearing no more than six (6) times in any twelve-month period with respect to removing dilapidated buildings, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land. The expense of cleaning the property shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is less. The board of supervisors may assess the same penalty each time the property or land is cleaned as otherwise provided in this section.

The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a county clean a parcel owned by the State of Mississippi without first giving notice.

The assessment authorized by this section shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the county shall, upon order of the board of supervisors, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent taxes. Furthermore, the property owner whose land has been sold pursuant to this section shall have the same right of redemption as now provided by law for the sale of lands for delinquent taxes. All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from county boards.

SOURCES: Laws, 1983, ch. 459; Laws, 1996, ch. 332, § 1; Laws, 2012, ch. 366, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

Cross References — Municipal power as to cleaning of private property, see § 21-19-11.

ATTORNEY GENERAL OPINIONS

The authority granted the county by Section 19-5-105 may be exercised only in the areas of the county which are not within the corporate limits of a municipality. Smith, October 18, 1995, A.G. Op. #95-0696.

Notice must be given according to the terms of Section 19-5-105, personal service would not suffice. Walters, October 4, 1996, A.G. Op. #96-0635.

For the abatement of public health nuisances, a county may proceed under this section or notify the state board of health of the nuisance pursuant to § 41-23-13, and the county may consider passing an ordinance pursuant to § 19-5-9, which allows for the adoption of codes dealing with general public health, safety or welfare. Fillingane, Oct. 25, 2002, A.G. Op. #02-0586.

This section is sufficient authority for a county to remove inoperable, junk vehicles under the circumstances proscribed in the section, and where the county has found that same constitutes a menace to the public health and safety. Shaw, July 7, 2003, A.G. Op. 03-0298.

If registered mail sent to the property owner pursuant to Miss. Code Ann. § 19-5-105, which requires service on the property owner by registered mail, return receipt requested, receipted by addressee only, is refused by the addressee, and is marked by the Postal Service as "Refused" as described in Miss. R. Civ. P. 4(f), then such notice satisfies the service requirements of Miss. Code Ann. § 19-5-105. Meadows, February 2, 2007, A.G. Op. #07-00012, 2007 Miss. AG LEXIS 8.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and other Political Subdivisions §§ 398, 400-403, 406, 407.

LOCAL GOVERNMENT SOLID WASTE COLLECTION AND DISPOSAL ASSISTANCE ACT OF 1994

SEC.
19-5-107. Short title; purpose.
19-5-109. Estimation of cost of garbage collection and disposal services; means of meeting costs; effect on contracts.

§ 19-5-107. Short title; purpose.

This act [Laws, 1994, ch. 624] shall be known as the "Local Government Solid Waste Collection and Disposal Assistance Act of 1994" and is in response to concerns expressed by the Mississippi Municipal Association, the Mississippi Association of Supervisors and local governmental officials about their ability to provide solid waste management services in accordance with federal law and regulations without imposing an undue and inequitable financial burden on county and municipal residents.

SOURCES: Laws, 1994, ch. 624, § 1, eff from and after July 1, 1994.

§ 19-5-109. Estimation of cost of garbage collection and disposal services; means of meeting costs; effect on contracts.

(1) Each county and municipality shall make a good faith effort to estimate the cost of garbage and rubbish collection and disposal services. These costs may be met, in amounts necessary to defray the cost of the system, by any combination of generator fees, ad valorem tax revenues as authorized under Section 19-5-21 or Section 21-19-2, or county or municipal special funds as authorized under Section 19-5-21 or 21-19-2.

(2) Nothing in Chapter 624, Laws of 1994, shall be construed to abrogate or cancel any contract that a county or a municipality has entered into for garbage or rubbish collection or disposal. If a county or municipality entered into a contract before April 1, 1994, and the term or period of performance of that contract does not exceed five (5) years, the county or municipality may continue to levy the ad valorem tax assessment in effect before April 1, 1994, to honor the contract for the term of that contract.

SOURCES: Laws, 1994, ch. 624, § 2; Laws, 1996, ch. 536, § 3; Laws, 1997, ch. 423, § 3, eff from and after passage (approved March 24, 1997).

Editor's Note — The code sections affected by Laws, 1994, ch. 624, referenced in subsection (2) are §§ 19-5-107, 19-5-109, 19-5-18, 19-5-21, 19-5-22 and 21-19-2.

ATTORNEY GENERAL OPINIONS

General funds may be used to repair, operate and maintain equipment on the general county inventory, but the county may not use general funds to repair, operate, maintain or purchase equipment and trucks to collect and haul rubbish from ditches as part of the county's rubbish disposal system. Bailey, Dec. 12, 1997, A.G. Op. #97-0738.

Subsection (1) clearly permits counties to meet the costs of garbage and rubbish collection services by any combination of generator fees, ad valorem taxes as statutorily authorized, or special funds as statutorily authorized. Snyder, March 17, 2000, A.G. Op. #2000-0136.

A municipality has the authority to enter into contracts with a county that would enable the municipality to utilize the county landfill, and as such, the municipality is authorized to pay a "tipping" fee, or "gate" fee for the use of that landfill; the power of a county to grant exemptions for certain classes of "generators" would not affect the authority of the municipality to pay such a fee, and, further, that the municipality is not a "generator" of garbage or rubbish would be of no relevance to the payment of any such fee charged by the county. Davis, Sept. 6, 2002, A.G. Op. #02-0491.

WATER, SEWER, GARBAGE DISPOSAL, AND FIRE PROTECTION DISTRICTS

Sec.
19-5-151. Incorporation of districts authorized.
19-5-153. Petition for incorporation; adoption of resolution of intent to incorporate.
19-5-155. Public hearing; resolution of intention.
19-5-157. Publication of resolution; election.
19-5-159. Resolution of creation.
19-5-161. Costs.
19-5-163. Appeals.
19-5-164. Creation of district embracing lands in more than one county.
19-5-165. District as public corporation; transfer of assets and liabilities of rural water association to newly created water district.
19-5-167. Board of commissioners; appointment; terms; general powers and duties.
19-5-169. Board of commissioners; officers; seal.
19-5-171. Board of commissioners; eligibility; bond; oath; compensation.
19-5-173. Board of commissioners; power to enact regulations.
19-5-175. General powers of districts.
19-5-177. Additional powers of districts.
19-5-179. Eminent domain.
19-5-181. Revenue bonds; special improvement water and pollution abatement bonds; tax levies therefor.
19-5-183. Issuance, form and contents of bonds.
19-5-185. Sale of bonds; bids; refunding; validation.
19-5-187. Statutory lien of bondholders; appointment of receiver in case of default.
19-5-189. Tax levies.
19-5-191. Assessment and collection of charges against improved property.
19-5-193. Limitations upon holders of bonds.
19-5-195. Rates, fees, tolls or charges for use of system.
19-5-197. Exemption from taxation.
19-5-199. Construction contracts.
19-5-201. Annexations to district.
19-5-203. State and federal cooperation.
19-5-204. When district facilities may be required to be commensurate with those of an adjoining municipality.
19-5-205. Sections 19-5-151 through 19-5-207 are full and complete authority.
19-5-207. Financial statements.

§ 19-5-151. Incorporation of districts authorized.

(1) Any contiguous area situated within any county of the state, and not being situated within the corporate boundaries of any existing municipality, and having no adequate water system, sewer system, garbage and waste collection and disposal system, or fire protection facilities serving such area, may become incorporated as a water district, as a sewer district, as a garbage and waste collection and disposal district, as a fire protection district, as a combined water and sewer district, as a combined water and garbage and waste collection and disposal district, as a combined water and fire protection district, or as a combined water, sewer, garbage and waste collection and

disposal and fire protection district, in the manner set forth in the following sections.

(2) If the certificated area of a nonprofit, nonshare corporation chartered under the Mississippi Nonprofit Corporation Act for the purpose of owning and operating rural waterworks lies in one county, the corporation may become incorporated as a water district in the manner set forth in Section 19-5-153(3). If the nonprofit, nonshare corporation's certificated area lies in more than one (1) county, the procedure in Section 19-5-164 shall be used.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1; Laws, 1999, ch. 304, § 1; Laws, 2008, ch. 306, § 1, eff from and after passage (approved Mar. 17, 2008.)

Cross References — County establishment of rubbish and garbage disposal systems, see §§ 19-5-17 through 19-5-27.

Powers of fire protection districts created under provisions of §§ 19-5-151 through 19-5-207, see § 19-5-175.

Area of application of general powers and duties of fire protection grading district commissioners, see § 19-5-167.

Dissolution of board of commissioners of fire protection district created under this section, see § 19-5-167.

Exemption from highway privilege taxes of buses owned by school districts or motor vehicles owned by fire protection district incorporated pursuant to sections 19-5-51 through 19-5-207, see § 27-19-27.

Exemption of all motor vehicles owned by fire protection districts incorporated pursuant to sections 19-5-151 through 19-5-207 from ad valorem taxes, see § 27-51-41.

Public water authorities, see §§ 51-41-1 et seq.

Requirement that counties comply with the provisions of § 19-5-151 et seq. in order to receive funds from the county volunteer fire department fund, and as to the use of equipment purchased with such funds, or the receipt of such funds, by fire protection districts, see § 83-1-39.

JUDICIAL DECISIONS

1.5. Interpretation.

Both Miss. Code Ann. § 19-5-151 et seq. and Miss. Code Ann. § 41-67-1 et seq., regulate health-related matters. As such, they can be considered in pari materia, and any ambiguities in one provision should be resolved by applying the statute consistently with other statutes dealing with the same or similar subject matter. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022 (Miss. 2005), writ of certiorari denied by 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287, 74 U.S.L.W. 3598 (2006).

ATTORNEY GENERAL OPINIONS

General power to zone vests in governing authority as defined by § 17-1-1 and not in district created by § 19-5-151 et seq.; county may not use zoning ordinance to deny or abridge any power or authority of commission established by 19-5-151 et seq. Younger, June 6, 1990, A.G. Op. #90-0396.

Because there is no methodology for changing from existing fire protection district to fire protection grading district unless district boundaries are exactly the same, there cannot be conversion of taxing authority unless boundary lines are the same. Gildea, Nov. 19, 1992, A.G. Op. #92-0845.

Under Miss. Code Section 19-5-151, four million dollar levy which can be used by fire protection districts for "operation, support and maintenance of fire protection services" includes rescue equipment. Griffith, Feb. 25, 1993, A.G. Op. #93-0071.

Funds levied pursuant to House Bill 1377, Local and Private laws of 1987, and 19-5-151 et seq. may only be used for operation, support and maintenance of fire protection services; determination of what constitutes fire protection services is factual one but decision must be supported by evidence that expenditure of funds is related to fires, fire fighting and/or fire fighting personnel or equipment including emergency response and rescue services customarily associated with fire departments. Koenenn, July 12, 1993, A.G. Op. #93-0334.

Garbage district or garbage and fire protection district created pursuant to Section 19-5-151 et seq. has exclusive jurisdiction to provide garbage services within district; Regional Solid Waste Authority could not include in its district residential generators of garbage who were in fire and waste disposal district created under statute. Gex, Feb. 24, 1994, A.G. Op. #93-0986.

County may assist in maintenance of property owned by public water, sewer and fire protection district created and established pursuant to Sections 19-5-151 et seq. Trapp, Feb. 24, 1994, A.G. Op. #94-0079.

Under Sections 19-5-151 and 41-59-51, Fire Protection and EMS Districts are two separate and distinct entities and may not be created as one entity. Hatten, August 14, 1995, A.G. Op. #95-0529.

A utility district incorporated pursuant to Section 19-5-151 is created by resolution of the county board of supervisors and is, therefore, a governing authority as defined under the public purchasing laws. As a governing authority, a utility district is subject to the state purchasing laws and is authorized to make purchases utilizing the state contract list. Burt, July 26, 1995, A.G. Op. #95-0418.

The North Tunica County Fire Protection District is required to give notice and solicit bids for selection of depositories and is required to have securities pledged for all its deposits. Dulaney, July 10, 2002, A.G. Op. #02-0210.

Section 6 of House Bill 1641, Local and Private Laws, 1991, does not apply to fire protection districts created pursuant to this section. Watt, Oct. 24, 2003, A.G. Op. 03-0532.

If a municipality within Jackson County annexes an unincorporated area currently served by the Jackson County Fire District, the municipality would not be required to annex the entire fire protection district. Watt, Oct. 24, 2003, A.G. Op. 03-0532.

A county may contract to provide fire protection services only, including the water supply for that contract, to a business located within the corporate limits of a municipality which is in a certificated area without the consent of the entity holding the certificate of public necessity. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

A county may contract with a municipality to provide fire protection services to a business located within the corporate limits of the municipality. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

A sewer district is a public corporation and a body politic and as such its records are public records. However, any records which constitute the work product of an attorney or attorney-client privileged records are exempt from the Mississippi public Records Act. Cobb, Apr. 16, 2004, A.G. Op. 04-0170.

A district's exercise of the power and authority granted to make regulations to secure the general health is left to the judgment and discretion of its board of commissioners, provided the regulations are related to and consistent with the purposes for which the district was created. Bobo, June 11, 2004, A.G. Op. 04-0238.

Where there is an active board of commissioners of a fire protection district, neither the county board of supervisors nor an individual supervisor has the authority to ban a fire chief or any other fire department personnel of a volunteer fire department from the district's fire station. Manuel, Dec. 9, 2005, A.G. Op. 05-0569.

A utility district does not have authority under Miss. Code Ann. § 19-5-195 to charge an "impact fee," and such a fee would amount to an unauthorized tax. Norris, March 20, 2007, A.G. Op. #07-00097, 2007 Miss. AG LEXIS 109.

RESEARCH REFERENCES

ALR. Sewage disposal plant as nuisance. 40 A.L.R.2d 1177.

Public dump as nuisance. 52 A.L.R.2d 1134.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability. 57 A.L.R.2d 1336.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 189 et seq.

§ 19-5-153. Petition for incorporation; adoption of resolution of intent to incorporate.

(1) A petition for the incorporation of a district may be submitted to the board of supervisors of a county, signed by not less than twenty-five (25) owners of real property residing within the boundaries of the proposed district. The petition shall include: (a) a statement of the necessity for the service or services to be supplied by the proposed district; (b) the proposed corporate name for the district; (c) the proposed boundaries of the district; (d) an estimate of the cost of the acquisition or construction of any facilities to be operated by the district, which estimate, however, shall not serve as a limitation upon the financing of improvements or extensions to the facilities; (e) a statement of whether or not the board of supervisors of the county shall exercise the authority to levy the tax outlined in Section 19-5-189, Mississippi Code of 1972; and (f) a statement of whether or not the board of supervisors of the county shall exercise the authority to make assessments as outlined in Section 19-5-191, Mississippi Code of 1972. The petition shall be signed in person by the petitioners, with their respective residence addresses. The petition shall be accompanied by a sworn statement of the person or persons circulating the petition, who shall state under oath that the person or persons witnessed the signature of each petitioner, that each signature is the signature of the person it purports to be, and that, to the best of the person's or persons' knowledge, each petitioner was at the time of signing an owner of real property within and a resident of the proposed district. No individual tract of land containing one hundred sixty (160) acres or more shall be included in any such district unless the owner or owners of said tract is a signer under oath of the petition for the incorporation of such district.

(2) The board of supervisors of a county, in its discretion, may initiate the incorporation of a district under Sections 19-5-151 through 19-5-207 by resolution of the board and presentation of a petition signed by at least twenty-five (25) property owners of the area to be incorporated if at least forty (40) property owners reside within the district. However, no individual tract of land containing one hundred sixty (160) acres or more shall be included in any such district unless the owner or owners of the tract gives written consent for the inclusion of the lands in such district.

(3) The board of directors of a nonprofit, nonshare rural waterworks corporation may petition the board of supervisors of a county in which the corporation's certificated area lies to become a water district under Sections 19-5-151 through 19-5-207. The board of directors shall adopt a resolution at a special meeting of the board. The meeting shall be open to any subscriber provided water service by the corporation. The board shall mail a notice of the meeting to each subscriber provided water service. The resolution shall provide that information required of the petition under subsection (1) of this section. The resolution shall be adopted by a three-fifths (3/5) majority vote of the board of directors.

(4) With respect to the incorporation and operation of a fire protection district pursuant to Sections 19-5-151 through 19-5-207, the word "owners" shall include any lessees of real property of a water supply district the term of whose original lease is not less than sixty (60) years and shall also include sublessees if the original lease of which they are subletting is not less than sixty (60) years.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1; Laws, 1983, ch. 419; Laws, 1999, ch. 304, § 2, eff from and after August 2, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Cross References — Exemption from highway privilege taxes of buses owned by school districts or motor vehicles owned by fire protection district incorporated pursuant to sections 19-5-151 through 19-5-207, see § 27-19-27.

Exemption of all motor vehicles owned by fire protection districts incorporated pursuant to sections 19-5-151 through 19-5-207 from ad valorem taxes, see § 27-51-41.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 19-5-153, the Board may initiate the incorporation of a district by resolution and presentation of a petition. Such a petition is required to include a cost estimate of acquiring or constructing facilities. Dulaney, July 19, 1995, A.G. Op. #95-0416.

Pursuant to Section 19-5-153, the Board has the authority to contract with and pay an appraiser to appraise the current water and sewer system in order to obtain the necessary information to complete the petition required to initiate such incorporation. Dulaney, July 19, 1995, A.G. Op. #95-0416.

An individual tract of land containing 160 acres or more, the owner of which has not signed the petition to incorporate a district or has not given written consent to be included, is not a part of the district. Wiggins, July 24, 1998, A.G. Op. #98-0403.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:11 et seq. (drainage and sewerage districts; creation).

§ 19-5-155. Public hearing; resolution of intention.

Upon the filing of such petition, or upon the adoption of a resolution declaring the intent of the board of supervisors to incorporate such district, it shall then be the duty of the board of supervisors of such county to fix a time and place for a public hearing upon the question of the public convenience and necessity of the incorporation of the proposed district. The date fixed for such hearing shall be not more than thirty (30) days after the filing of the petition, and the date of the hearing, the place at which it shall be held, the proposed boundaries of said district, and the purpose of the hearing, shall be set forth in a notice to be signed by the clerk of the board of supervisors of such county. Such notice shall be published in a newspaper having general circulation within such proposed district once a week for at least three (3) consecutive weeks prior to the date of such hearing. The first such publication shall be made not less than twenty-one (21) days prior to the date of such hearing and the last such publication shall be made not more than fourteen (14) days prior to the date of such hearing.

If, at such public hearing, the board of supervisors finds (1) that the public convenience and necessity require the creation of the district, and (2) that the creation of the district is economically sound and desirable, the board of supervisors shall adopt a resolution making the aforesaid findings and declaring its intention to create the district on a date to be specified in such resolution. Such resolution shall also designate the name of the proposed district, define its territorial limits which shall be fixed by said board pursuant to such hearing, and state whether or not the board of supervisors shall levy the tax authorized in section 19-5-189, Mississippi Code of 1972, and whether or not the board of supervisors proposes to assess benefited properties as outlined in section 19-5-191, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

Cross References — Public hearings regarding Joint Water Management Districts, see § 51-8-7.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:23 (order — public hearing on petition for sanitary sewerage district).

§ 19-5-157. Publication of resolution; election.

A certified copy of the resolution so adopted shall be published in a newspaper having a general circulation within such proposed district once a week for at least three (3) consecutive weeks prior to the date specified in such resolution as the date upon which such board intends to create such district. The first such publication shall be made not less than twenty-one (21) days prior to the date specified, and the last such publication shall be made not more than fourteen (14) days prior to such date.

If twenty percent (20%) or one hundred fifty (150), whichever is the lesser, of the qualified electors of such proposed district file written petition with such board of supervisors on or before the date specified aforesaid, protesting against the creation of such district, the board of supervisors shall call an election on the question of the creation of such district. Such election shall be held and conducted by the election commissioners of the county as nearly as may be in accordance with the general laws governing elections, and such election commissioners shall determine which of the qualified electors of such county reside within the proposed district, and only such qualified electors as reside within such proposed district shall be entitled to vote in such election. Notice of such election setting forth the time, place or places, and purpose of such election shall be published by the clerk of the board of supervisors, and such notice shall be published for the time and the manner provided in section 19-5-155 for the publication of the resolution of intention. The ballots to be prepared for and used at said election shall be in substantially the following form:

"FOR CREATION OF ________ DISTRICT ( )
AGAINST CREATION OF ________ DISTRICT ( )"

and voters shall vote by placing a cross mark (x) or check mark (√) opposite their choice.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

Cross References — Publication of resolution authorizing issue of bonds, and election on question of bond issuance, see § 19-5-183.

Applicability of this section to the levy of a special tax for the operation, support and maintenance of a fire protection district, see § 19-5-189.

Applicability of this section to procedures for the creation of a fire protection grading district, see § 19-5-221.

Applicability of this section to procedures for the creation of a joint water management district, see § 51-8-11.

§ 19-5-159. Resolution of creation.

If no petition requiring an election be filed or if three-fifths (3/5) of those voting in said election provided in Section 19-5-157 vote in favor of the creation of such district, the board of supervisors shall adopt a resolution creating the district as described in the resolution of intention.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

§ 19-5-161. Costs.

All costs incident to the publication of the notices and all other costs incident to the public hearing and election provided in Sections 19-5-153 through 19-5-157 may be paid by the board of supervisors, in its discretion, or shall be borne by the parties filing the petition, detailed in Section 19-5-153. The board of supervisors, in its discretion, may require the execution of a cost bond by the parties filing the petition. Such bond shall be in an amount and with good sureties to guarantee the payment of such costs.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

§ 19-5-163. Appeals.

Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudication of the board of supervisors may appeal to the circuit court of the county in the manner provided by law for appeals from orders of the board of supervisors. However, if no such appeal be taken within a period of fifteen (15) days from and after the date of the adoption of the resolution creating any such district, the creation of such district shall be final and conclusive and shall not thereafter be subject to attack in any court.

SOURCES: Codes, 1942, § 2998.7-21; Laws, 1972, ch. 536, § 1; Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

§ 19-5-164. Creation of district embracing lands in more than one county.

A district embracing lands in more than one county may be created under the provision of Sections 19-5-151 through 19-5-207 by the following procedure if the portion of such district located in each county includes twenty percent (20%) or more of all of the lands to be embraced in a district:

(1) The portion of a proposed district containing the largest area of land shall be first created into a district by the board of supervisors of the county in which such largest portion is situated, such county to be known as the "incorporating county."

(2) The resolution first creating such district shall include the exact boundaries of the lands situated in the incorporating county and shall include the exact boundaries of the contiguous area in other counties to be included in the district.

(3) The resolution by the incorporating county shall designate the official name of the district and shall delineate the procedure by which appointment of the five (5) commissioners authorized by Section 19-5-167, Mississippi Code of 1972, shall be apportioned among the counties in which portions of such districts are located.

(4) The resolution adopted by the board of supervisors of any county desiring to include contiguous lands into a district initially created as outlined above shall contain exact and identical provisions to those in the resolution by the board of supervisors of the incorporating county.

(5) The board of supervisors of the incorporating county shall, within sixty (60) days after the adoption of a resolution or resolutions by the board of supervisors of adjoining counties to enter lands into the district, enter an order on its minutes acknowledging, affirming and adjudicating the incorporation of the district.

(6) Any contiguous lands in an adjoining county, but not amounting to twenty percent (20%) or more of the total land area included in a district, may be served by a district created under the provisions of Sections 19-5-151 through 19-5-207 if a certificate of convenience and necessity to do so is issued by the Mississippi Public Service Commission. Provided, however, the provisions of Sections 19-5-189 and 19-5-191, Mississippi Code of 1972, shall not be applicable to any lands not a part of a district.

SOURCES: Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

Cross References — Exemption from highway privilege taxes of buses owned by school districts or motor vehicles owned by fire protection district incorporated pursuant to sections 19-5-151 through 19-5-207, see § 27-19-27.

Exemption of all motor vehicles owned by fire protection districts incorporated pursuant to sections 19-5-151 through 19-5-207 from ad valorem taxes, see § 27-51-41.

ATTORNEY GENERAL OPINIONS

The board of commissioners could cede the jurisdiction of the tract of land in the Morgantown Fire Protection District to the Walthall County Fire Protection District by order in the minutes, and the board of supervisors of Walthall County could create a fire district by following the procedures of Section 19-5-164 or a fire protection grading district by following the procedures in Sections 19-5-217 et seq. Shepard, Feb. 9, 2001, A.G. Op. #2001-0034.

§ 19-5-165. District as public corporation; transfer of assets and liabilities of rural water association to newly created water district.

(1) Beginning on the date of the adoption of the resolution creating any district, the district shall be a public corporation in perpetuity under its corporate name and shall, in that name, be a body politic and corporate with power of perpetual succession.

(2) If the creation of the district is initiated in accordance with Section 19-5-153(3), all assets and liabilities of the nonprofit, nonshare corporation shall become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors or actions by members of the board beginning on the date of adoption of the resolution of the board of supervisors creating the district.

SOURCES: Codes, 1942, § 2998.7-22; Laws, 1972, ch. 536, § 2; Laws, 1999, ch. 304, § 3, eff from and after August 2, 1999 (the date the United States

Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 304, §§ 8, 9, on August 2, 1999.

ATTORNEY GENERAL OPINIONS

The intent of the statute was to create the duty of the district to provide services within its district, and not to cease to provide the same unless there was some other source that could immediately provide the same services as the district. Smith, May 26, 2000, A.G. Op. #2000-0274.

The North Tunica County Fire Protection District is required to give notice and solicit bids for selection of depositories and is required to have securities pledged for all its deposits. Dulaney, July 10, 2002, A.G. Op. #02-0210.

A fire protection district formed pursuant to §§ 19-5-151 et seq. is created by a resolution and is a "public body" under the Mississippi Public Records Act. Schwartz, Mar. 5, 2004, A.G. Op. 04-0091.

A sewer district is a public corporation and a body politic and as such its records are public records. However, any records which constitute the work product of an attorney or attorney-client privileged records are exempt from the Mississippi public Records Act. Cobb, Apr. 16, 2004, A.G. Op. 04-0170.

§ 19-5-167. Board of commissioners; appointment; terms; general powers and duties.

(1) Except as otherwise provided in this section, the powers of each district shall be vested in and exercised by a board of commissioners consisting of five (5) members to be appointed by the board of supervisors. Upon their initial appointment, one (1) of the commissioners shall be appointed for a term of one (1) year; one (1) for a term of two (2) years; one (1) for a term of three (3) years; one (1) for a term of four (4) years; and one (1) for a term of five (5) years; thereafter, each commissioner shall be appointed and shall hold office for a term of five (5) years. Any vacancy occurring on a board of commissioners shall be filled by the board of supervisors at any regular meeting of the board of supervisors, and the board of supervisors shall have the authority to fill all unexpired terms of any commissioner or commissioners. Notwithstanding the appointive authority herein granted to the board of supervisors, its legal and actual responsibilities, authority and function, subsequent to the creation of any district, shall be specifically limited to the appointive function and responsibilities outlined in Sections 19-5-179, 19-5-189 and 19-5-191. The operation, management, abolition or dissolution of such district, and all other matters in connection therewith, shall be vested solely and only in the board of commissioners to the specific exclusion of the board of supervisors, and the abolition, dissolution or termination of any district shall be accomplished only by unanimous resolution of the board of commissioners. However, if any area within the boundaries of a fire protection district created under Section 19-5-151 et seq. is annexed by a municipality, a reduction of the boundaries of the district to exclude such annexed area may be accomplished by the adoption

of a resolution by a majority vote of the board of commissioners of that fire protection district. The board of commissioners of a fire protection district created under Section 19-5-151 et seq., by unanimous resolution, may dissolve such district and, under Section 19-5-215 et seq., may create a fire protection grading district consisting of the same boundaries as the previously existing fire protection district. Petition and election requirements of Sections 19-5-217 through 19-5-227 shall not apply where the board of commissioners dissolves a fire protection district and creates a fire protection grading district under this section. Except as otherwise provided herein, such board of commissioners shall have no power, jurisdiction or authority to abolish, dissolve or terminate any district while the district has any outstanding indebtedness of any kind or character, unless such dissolution or termination is accomplished under the provisions of Section 19-5-207. If a fire protection district is dissolved in accordance with this subsection, the board of supervisors may continue to levy the same millage as was being levied within the boundaries of the fire protection district before its dissolution provided that a fire protection grading district is created, in accordance with Section 19-5-215 et seq., with identical boundaries as the previously existing fire protection district.

(2) The board of supervisors of the incorporating county, upon receipt of a unanimous resolution from two (2) or more boards of commissioners of duly created fire protection districts, may consolidate such districts for administrative purposes. Upon receipt of unanimous resolutions requesting consolidation, the board of supervisors shall conduct a public hearing to determine the public's interest. Following such a hearing, the board may create a consolidated commission consisting of the participating districts for administrative purposes. Such districts then shall dissolve their respective boards of commissioners, transferring all records to the consolidated board of commissioners. A consolidated board of commissioners consisting of not less than five (5) members shall be appointed with equal representation from each participating district. Any commissioners appointed to a consolidated fire protection district commission must comply with eligibility requirements as authorized in Section 19-5-171. In the event that a consolidated fire protection district commission consists of an even number of members, the chairman elected as authorized by Section 19-5-169 shall vote only in the event of a tie. General powers and duties of commissioners and commissions and other related matters as defined in Sections 19-5-151 through 19-5-207 shall apply to the entire area contained in the consolidating fire protection districts as described in the resolutions incorporating the fire protection districts as well as to subsequent annexations.

(3) If the creation of the district is initiated in accordance with Section 19-5-153(3), the powers of the district shall be vested in and exercised by a board of commissioners selected in the following manner:

(a) Upon creation of the district, the board of directors of the former nonprofit, nonshare corporation shall serve as the board of commissioners of the newly created water district for a period not to exceed sixty (60) days. The initial commissioners shall be subject to the requirements of Section

19-5-171, except the requirement for executing a bond. If an initial commissioner fails to meet a requirement of Section 19-5-171 as provided in this section, the board of supervisors shall appoint a member to fill that vacancy on the board of commissioners.

(b) In the resolution creating a district initiated in accordance with Section 19-5-153(3), the board of supervisors shall direct the existing board of directors of the rural water association to create within the district five (5) posts from which commissioners shall be elected. The board of supervisors shall designate the positions to be elected from each post as Post 1, Post 2, Post 3, Post 4 and Post 5. Post 5 shall be an at-large post composed of the entire district. Within sixty (60) days following creation of the district, the board of supervisors shall call an election. Such election shall be held and conducted by the election commissioners in accordance with the general laws governing elections. The election commissioners shall determine which of the qualified electors of the county reside within the district and only those electors shall be entitled to vote in the election. Notice of the election setting forth the time, place or places and the purpose of the election shall be published by the clerk of the board of supervisors in the manner provided in Section 19-5-155.

The initial elected commissioners shall be elected to a term of office expiring on December 31 of the year in which the next succeeding general election for statewide officials is held. After the initial term of office, commissioners shall be elected to four-year terms. Vacancies shall be filled by the procedure set forth in Section 23-15-839.

SOURCES: Codes, 1942, § 2998.7-22; Laws, 1972, ch. 536, § 2; Laws, 1992, ch. 387, § 15; Laws, 1999, ch. 304, § 4; Laws, 2010, ch. 452, § 2, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted the word “may” preceding “receipt of a unanimous resolution” in the first sentence of subsection (1). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor’s Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 304, § 4, on August 2, 1999.

Amendment Notes — The 2010 amendment, in (1), added the sixth sentence, and made stylistic changes in the seventh and last sentences.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-5-167 does not provide that boundaries of fire protection grading district may be reconfigured after conversion from fire protection district. Gildea, Mar. 12, 1993, A.G. Op. #93-0918.

There is no prohibition to a commissioner to the Diamondhead Water and Sewer District being reappointed to consecutive terms. Blackwell, August 28, 1998, A.G. Op. #98-0528.

Upon creation of a consolidated district consisting of two existing fire protection districts, there would be a violation of subsection (2) of this section if the commissioners of one of the existing fire protection districts continued as commissioners with expired terms to be filled by the commissioners of the other existing fire protection district. Terney, February 12, 1999, A.G. Op. #99-0022.

A county board of supervisors, in its discretion, may make a request to the Public Service Commission to cancel a previous order granted to a water, sewer and fire district without violating subsection (1) of this section. Morrow, Apr. 2, 2004, A.G. Op. 04-0125.

§ 19-5-169. Board of commissioners; officers; seal.

The board of commissioners shall organize by electing one of its members as chairman and another as vice-chairman. It shall be the duty of the chairman to preside at all meetings of the board and to act as the chief executive officer of the board and of the district. The vice-chairman shall act in the absence or disability of the chairman. The board also shall elect and fix the compensation of a secretary-treasurer who may or may not be a member of the board. It shall be the duty of the secretary-treasurer to keep all minutes and records of the board and to safely keep all funds of the district. The secretary-treasurer shall be required to execute a bond, payable to the district, in a sum and with such security as shall be fixed and approved by the board of commissioners. The terms of all officers of the board shall be for one year from and after the date of election, and shall run until their respective successors are appointed or elected and qualified.

Each board of commissioners shall adopt an official seal with which to attest the official acts and records of the board and district.

SOURCES: Codes, 1942, § 2998.7-23; Laws, 1972, ch. 536, § 3; Laws, 1999, ch. 304, § 5, eff from and after August 2, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.)

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 304, § 5, on August 2, 1999.

Cross References — Breaking of tie vote of consolidated fire protection district commission by chairperson elected pursuant to this section, see § 19-5-167.

§ 19-5-171. Board of commissioners; eligibility; bond; oath; compensation.

(1) Every resident citizen of the county in which is located any district created under Sections 19-5-151 through 19-5-207, of good reputation, being the owner of land or the conductor of a business situated within the district and being over twenty-five (25) years of age and of sound mind and judgment, shall be eligible to hold the office of commissioner.

(2) Except as provided in Section 19-5-164(3), each person appointed or elected as a commissioner, before entering upon the discharge of the duties of the person's office, shall be required to execute a bond payable to the State of Mississippi in the penal sum of not less than Fifty Thousand Dollars ($50,000.00) conditioned that the person will faithfully discharge the duties of

the office. Each bond shall be approved by the clerk of the board of supervisors and filed with the clerk.

(3) Each commissioner shall take and subscribe to an oath of office prescribed in Section 268, Mississippi Constitution of 1890, before the clerk of the board of supervisors that the person will faithfully discharge the duties of the office of commissioner, which oath shall also be filed with the clerk and preserved with the official bond.

(4) Except as provided in subsection (5), the commissioners so appointed or elected and qualified shall be compensated for their services for each meeting of the board of commissioners attended, either regular or special, at a rate to be fixed by the board of supervisors, not to exceed the rate established in Section 25-3-69 for officers of state boards, commissions and agencies, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41. However, in no one (1) calendar year shall any commissioner be compensated for more than twenty-four (24) meetings.

(5)(a) The commissioners of the Hancock County Water and Sewer District shall be compensated for their services at a rate up to Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

(b) The commissioners of the Kiln Utility and Fire District of Hancock County shall be compensated for their services at a rate up to Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

(c) The commissioners of the Pearlington Water and Sewer District of Hancock County shall be compensated for their services at a rate up to Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

(d) The commissioners of the Diamondhead Water and Sewer District of Hancock County shall be compensated for their services at a rate up to the Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

(e) The commissioners of the Hancock County Solid Waste Authority shall be compensated for their services at a rate up to the Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

(f) The commissioners of the Standard Dedeaux Water District shall be compensated for their services at a rate up to the Eighty-four Dollars ($84.00) per day for each meeting of the board of commissioners attended, either regular or special, and shall be reimbursed for all expenses necessarily incurred in the discharge of their official duties in accordance with Section 25-3-41.

SOURCES: Codes, 1942, § 2998.7-24; Laws, 1972, ch. 536, § 4; Laws, 1999, ch. 304, § 6; Laws, 2002, ch. 580, § 2; Laws, 2008, ch. 454, § 3; Laws, 2009, ch. 453, § 1; Laws, 2009, ch. 467, § 4; Laws, 2011, ch. 902, § 2, eff from and after passage (approved Mar. 30, 2011.)

Joint Legislative Committee Note — Section 1 of ch. 453, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 4 of ch. 467, Laws of 2009, effective from and after July 1, 2009 (approved March 30, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 304, § 6, on August 2, 1999.

This section was amended by House Bill No. 569, Local and Private Laws of 2011, which was enrolled as Chapter 902.

Amendment Notes — The 2011 amendment substituted "Kiln Utility and Fire District" for "Kiln Water and Fire Protection District" in (5)(b).

Cross References — Eligibility requirements authorized in this section as applicable to commissioners of consolidated fire protection district commission, see § 19-5-167.

ATTORNEY GENERAL OPINIONS

While a person who has not posted bond or taken the oath of office may be serving de facto, such person would not be serving de jure since he has not qualified for the office. Strickland, Oct. 3, 1991, A.G. Op. #91-0712.

If a person has in fact not qualified for the office of Commissioner of a Fire District, and has in fact not served de facto or otherwise, then the conflict of interest limitations will not be applicable. Strickland, Oct. 3, 1991, A.G. Op. #91-0712.

§ 19-5-173. Board of commissioners; power to enact regulations.

The board of commissioners shall have the power to make regulations to secure the general health of those residing in the district; to prevent, remove and abate nuisances; to regulate or prohibit the construction of privy-vaults and cesspools, and to regulate or suppress those already constructed; and to compel and regulate the connection of all property with sewers.

SOURCES: Codes, 1942, § 2998.7-25; Laws, 1972, ch. 536, § 5; Laws, 1973, ch. 370, § 1; ch. 396, § 1, eff from and after passage (approved March 28, 1973).

JUDICIAL DECISIONS

1. In general.

Residents sued a district, claiming that it did not have the authority to enact an ordinance regulating the disposal of wastewater. Although the district had the authority to enact the ordinance, there was no basis for the grant of summary judgment because issues of fact remained as to whether the ordinance conflicted with rules and regulations promulgated by the Mississippi Department of Health. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022 (Miss. 2005), writ of certiorari denied by 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287, 74 U.S.L.W. 3598 (2006).

Water and sewer district's ordinance regulating individual wastewater disposal systems was not preempted by Mississippi Individual On-Site Wastewater Disposal System Law, Miss. Code Ann. §§ 41-67-1 to 41-67-31, and was a valid exercise of sewer district's general police powers and its power to regulate the general health of its residents granted under Miss. Code Ann. § 19-5-173. The Mississippi On-Site Wastewater Disposal System Law, while not mentioning sewer districts, did not expressly prevent sewer districts from regulating the use or maintenance of individual on-site wastewater disposal systems, and it did not repeal Miss. Code Ann. § 19-5-173. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1 (Miss. Ct. App. 2004).

ATTORNEY GENERAL OPINIONS

Although a sewer district may require a property owner to connect to a sewer, an owner cannot be required to place a lift or pump on his property to pump sewage uphill to the district's public line. Frierson, Apr. 27, 2001, A.G. Op. #01-0210.

A district's exercise of the power and authority granted to make regulations to secure the general health is left to the judgment and discretion of its board of commissioners, provided the regulations are related to and consistent with the purposes for which the district was created. Bobo, June 11, 2004, A.G. Op. 04-0238.

§ 19-5-175. General powers of districts.

Districts created under the provisions of Sections 19-5-151 through 19-5-207 shall have the powers enumerated in the resolution of the board of supervisors creating such districts but shall be limited to the conducting and operating of a water supply system, a sewer system, a garbage and waste collection and disposal system, a fire protection system, a combined water and fire protection system, a combined water and sewer system, a combined water and garbage and waste collection and disposal system, or a combined water, sewer, garbage and waste collection and disposal and fire protection system; and to carry out such purpose or purposes, such districts shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, and to contract with any municipality, person, firm or corporation for such services and for a supply and distribution of water, for collection, transportation, treatment and/or disposal of sewage and for services required incident to the operation and maintenance of such systems. As long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services within such district. However, if the board of commissioners of such district and the board of supervisors unanimously agree, the county may contract directly with any fire protection services provider, in which case the board of supervisors may distribute directly to the fire protection services provider any or all of the funds that otherwise would be distributed to the fire protection district.

Any district created pursuant to the provisions of Sections 19-5-151 through 19-5-207 shall be vested with all the powers necessary and requisite for the accomplishment of the purpose for which such district is created. No enumeration of powers herein shall be construed to impair or limit any general grant of power herein contained nor to limit any such grant to a power or powers of the same class or classes as those enumerated. Such districts are empowered to do all acts necessary, proper or convenient in the exercise of the powers granted under such sections.

SOURCES: Codes, 1942, §§ 2998.7-25, 2998.7-26; Laws, 1972, ch. 536, §§ 5, 6; Laws, 1973, ch. 370, § 1; Laws, 1973 ch. 396, § 1; Laws, 1992, ch. 387, § 16, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Participation by counties in regional solid waste disposal and recovery systems, see § 17-17-33.

Transactions involving property, assets, and merger of nonprofit, nonshare corporations chartered for rural waterworks or sewage disposal system purposes, and of utility districts, see §§ 19-5-251 through 19-5-257.

JUDICIAL DECISIONS

1.5. Authority to regulate wastewater.

Residents sued a district, claiming that it did not have the authority to enact an ordinance regulating the disposal of wastewater. Although the district had the authority to enact the ordinance, there was no basis for the grant of summary judgment because issues of fact remained as to whether the ordinance conflicted with rules and regulations promulgated by the Mississippi Department of Health. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022 (Miss. 2005), writ of certiorari denied by 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287, 74 U.S.L.W. 3598 (2006).

ATTORNEY GENERAL OPINIONS

Water supply system districts created and operating pursuant to Miss. Code Sections 19-5-151 through 19-5-207 may adopt ordinances and rules establishing standards for water main installation before such mains may be accepted by the district for use and maintenance. Frierson, Aug. 29, 1997, A.G. Op. #97-0496.

A county water and sewer district could not provide water service to a public park located immediately adjacent to the district boundary and to "an additional community park located within the district's boundaries" without charging therefor. Fonda, October 9, 1998, A.G. Op. #98-0612.

A fire protection district is authorized to undertake services related to fires and fire fighting, including emergency response and rescue services customarily associated with fire departments. Terney, December 11, 1998, A.G. Op. #98-0757.

A district may require sewer users to pay hookup fees or turn-on fees and monthly service charges that are reasonable. Compretta, August 6, 1999, A.G. Op. #99-0313.

The intent of the statute was to create the duty of the district to provide services within its district, and not to cease to provide the same unless there was some other source that could immediately provide the same services as the district. Smith, May 26, 2000, A.G. Op. #2000-0274.

Although a sewer district may require a property owner to connect to a sewer, an owner cannot be required to place a lift or pump on his property to pump sewage uphill to the district's public line. Frierson, Apr. 27, 2001, A.G. Op. #01-0210.

Fire departments have the power to verify that all reports of fires are handled appropriately and that the validity or invalidity of all reports of fires are verified. Miller, May 31, 2002, A.G. Op. #02-0280.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 19-5-177. Additional powers of districts.

(1) Any district created under Sections 19-5-151 through 19-5-207, acting by and through the board of commissioners of such district as its governing authority, shall have the following, among other, powers:

(a) To sue and be sued;

(b) To acquire by purchase, gift, devise and lease or any other mode of acquisition, other than by eminent domain, hold and dispose of real and personal property of every kind within or without the district;

(c) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds, leases or contracts for financial advisory services;

(d) To incur debts, to borrow money, to issue negotiable bonds, and to provide for the rights of the holders thereof;

(e) To fix, maintain, collect and revise rates and charges for services rendered by or through the facilities of such district, which rates and charges shall not be subject to review or regulation by the Mississippi Public Service Commission except in those instances where a city operating similar services would be subject to regulation and review; however, the district may furnish services, including connection to the facilities of the district, free of charge to the county or any agency or department of the county and to volunteer fire departments located within the service area of the district. The district shall obtain a certificate of convenience and necessity from the Mississippi Public Service Commission for operating of water and/or sewer systems;

(f) To pledge all or any part of its revenues to the payment of its obligations;

(g) To make such covenants in connection with the issuance of bonds or to secure the payment of bonds that a private business corporation can make under the general laws of the state;

(h) To use any right-of-way, public right-of-way, easement, or other similar property or property rights necessary or convenient in connection with the acquisition, improvement, operation or maintenance of the facilities of such district held by the state or any political subdivision thereof; however, the governing body of such political subdivision shall consent to such use;

(i) To enter into agreements with state and federal agencies for loans, grants, grants-in-aid, and other forms of assistance including, but not limited to, participation in the sale and purchase of bonds;

(j) To acquire by purchase any existing works and facilities providing services for which it was created, and any lands, rights, easements, franchises and other property, real and personal necessary to the completion and operation of such system upon such terms and conditions as may be agreed upon, and if necessary as part of the purchase price to assume the payment of outstanding notes, bonds or other obligations upon such system;

(k) To extend its services to areas beyond but within one (1) mile of the boundaries of such district; however, no such extension shall be made to areas already occupied by another corporate agency rendering the same service so long as such corporate agency desires to continue to serve such areas. Areas outside of the district desiring to be served which are beyond the one (1) mile limit must be brought into the district by annexation proceedings;

(*l*) To be deemed to have the same status as counties and municipalities with respect to payment of sales taxes on purchases made by such districts;

(m) To borrow funds for interim financing subject to receipt of funds as outlined in Section 19-5-181;

(n) To provide group life insurance coverage for all or specified groups of employees of the district and group hospitalization benefits for those employees and their dependents, and to pay the total cost of these benefits. For purposes of this paragraph, the term "employees" does not include any person who is a commissioner of a district created under Sections 19-5-151 through 19-5-207, and such commissioners are not eligible to receive any insurance coverage or benefits made available to district employees under this paragraph.

(2) Any district which is incorporated under Sections 19-5-151 through 19-5-207 to provide sewer services may install or provide for the installation of sewage holding tanks at residential properties within the district, if funding for municipal or community sewers has been awarded to the district. The district shall maintain or provide for the maintenance of the sewage holding tank systems. The district may assess and collect from each resident using a sewage holding tank a fee covering the costs of providing the services authorized under this section. When municipal or community sewers are available and ready for use, residences with sewage holding tanks shall be connected to the sewer system.

SOURCES: Codes, 1942, § 2998.7-27; Laws, 1972, ch. 536, § 7; Laws, 1999, ch. 361, § 1; Laws, 1999, ch. 565, § 1; Laws, 2002, ch. 580, § 1, eff from and after passage (approved Apr. 11, 2002.)

Joint Legislative Committee Note — Section 3 of ch. 361 Laws, 1999, effective from and after its passage (approved March 15, 1999), amended this section. Section 9 of ch. 565, Laws, 1999, effective July 1, 1999 (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 565, Laws, 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Cross References — Transactions involving property, assets, and merger of nonprofit, nonshare corporations chartered for rural waterworks or sewage disposal system purposes, and of utility districts, see §§ 19-5-251 through 19-5-257.

JUDICIAL DECISIONS

1. In general.
2. Extension of services beyond boundaries of district.

1. In general.

A water district could not appropriately charge an impact fee to the owner of an apartment complex where the water district established all other rates and charges in 1985 and had not changed them up to the date of the trial in 1989, the water district had never charged another customer with an impact fee, the water district had adequate capacity to serve the apartment complex, and the water district established the fee (1) in the absence of a disparate classification of the apartment complex as a separate class of customer, (2) in the absence of an explanation of the fee's purpose, and (3) in the absence of identification of any increased costs associated with the service provided to the apartment complex. Sweet Home Water & Sewer Ass'n v. Lexington Estates, Ltd., 613 So. 2d 864 (Miss. 1993).

Acceptance of a utility's services does not signify non-verbal acceptance that binds the offeree to whatever contract terms the utility proposes; thus, an apartment complex's use of a water district's water system did not signify its acceptance of a contract term to pay an impact fee charged by the water district. Sweet Home Water & Sewer Ass'n v. Lexington Estates, Ltd., 613 So. 2d 864 (Miss. 1993).

2. Extension of services beyond boundaries of district.

To the extent that water customers in Alabama were located within the one mile of its service area, no Mississippi laws were violated when the water district extended water service to them. Shadburn v. Tishomingo County Water Dist., Inc., 710 So. 2d 1227 (Miss. Ct. App. 1998).

ATTORNEY GENERAL OPINIONS

Enclave is covered by statute and if all 160 acres is within one mile of its boundary with district then district may extend its services to that enclave without annexation proceedings; district may extend its services to area within one mile of boundary based on owner's petition for services without publication for lienholder of territory in question; however, effort to identify and give notice to lienholder may prove beneficial even if not legally required. Gex, May 4, 1990, A.G. Op. #90-0303.

There is no authority for a fire protection district to operate an apparel shop. Montgomery, February 15, 1995, A.G. Op. #95-0020.

A fire protection district may lease surplus space in a facility for a fair market value lease payment. Montgomery, February 15, 1995, A.G. Op. #95-0020.

A municipality may require water users to pay hookup fees or turn-on fees and monthly service charges which are reasonable, but must treat individuals and similarly situated businesses the same way under constitutional principals, and any policy it adopts must pass constitutional muster. Povail, January 9, 1998, A.G. Op. #97-0794.

A county water and sewer district could not provide water service to a public park located immediately adjacent to the district boundary and to "an additional community park located within the district's boundaries" without charging therefor. Fonda, October 9, 1998, A.G. Op. #98-0612.

A fire protection district is authorized to undertake services related to fires and fire fighting, including emergency response and rescue services customarily associated with fire departments. Terney, December 11, 1998, A.G. Op. #98-0757.

As fire hydrants are a form of property that may be purchased by a fire protection district under the general authority of subsection (b) of this section, a fire protection district may acquire and install fire hydrants utilizing funds obtained from sources other than funds provided under § 83-1-39, and may install such fire hydrants upon the water lines of a water and sewer district pursuant to an agreement with the latter district under the Interlocal Cooperation Act. Westbrook, July 30, 1999, A.G. Op. #99-0379.

A district may require sewer users to pay hookup fees or turn-on fees and monthly service charges that are reasonable. Compretta, August 6, 1999, A.G. Op. #99-0313.

A fire district may on a case by case basis fix rates and charges for services which have already been rendered. However, this does not authorize the district to levy rates and charges in anticipation of rendering services. Marshall, Dec. 27, 2005, A.G. Op. 05-0520.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:31 et seq. (acquisition of property).

7A Am. Jur. Legal Forms 2d, Easements and Licenses in Real Property § 94:36 (grant of right of way to county to construct and maintain drainage ditch).

7A Am. Jur. Legal Forms 2d, Easements and Licenses in Real Property § 94:64 (strip of land for sewers and water mains-subdivision).

§ 19-5-179. Eminent domain.

The board of supervisors of such county may, upon petition by the board of commissioners of the district, exercise the power of eminent domain on behalf of the district wherever and whenever public necessity and convenience so requires.

SOURCES: Codes, 1942, § 2998.7-28; Laws, 1972, ch. 536, § 8, eff from and after passage (approved May 23, 1972).

Cross References — Authority, responsibilities, and function of boards of commissioners for fire protection grading districts as circumscribed by provisions of this section, see § 19-5-167.

ATTORNEY GENERAL OPINIONS

The statute does not specifically provide the powers of eminent domain over sixteenth section land to boards of supervisors. Wiggins, July 24, 1998, A.G. Op. #98-0403.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:31 et seq. (acquisition of property).

§ 19-5-181. Revenue bonds; special improvement water and pollution abatement bonds; tax levies therefor.

(1) Any such district shall have the power to provide funds for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending the facilities of such district or for the purpose of buying, leasing, or otherwise acquiring the assets and facilities of any nonprofit corporation organized pursuant to the provisions of Sections 79-11-101 through 79-11-399, or any other utility district by the issuance of revenue bonds. Such bonds shall be payable solely and only from the revenues of such facilities, and such revenues may be pledged from a portion of the service area of the district to the support of debt service for a specific series or issue of bonds if such apportionment is economically feasible.

(2) Any such district shall have the power to provide funds, in addition to or in conjunction with the funds authorized in subsection (1) above, for water supply or pollution abatement projects by issuing special improvement pollution abatement bonds, special improvement water bonds, or combinations of special improvement water and sewer bonds, if the resolution creating the district authorized the board of supervisors to make assessments against benefited properties as outlined in Section 19-5-191. Such bonds shall be payable solely and only from charges assessed to benefited properties as outlined in said Section 19-5-191.

(3) If the board of supervisors of the county should levy a special tax, as provided in Section 19-5-189, and consent to the pledge of any part thereof, then that part of such tax levy may be pledged in addition to the revenues of such facilities to the payment of such bonds, and upon the pledge thereof such part of said levy so pledged shall not be reduced while such bonds are outstanding and unpaid. If the board of supervisors of the county should provide for special improvement bonds as outlined in Section 19-5-191, the funds received from the charges assessed to the properties being benefited shall be pledged, separately or in conjunction with the revenues and the avails of taxes described above, for payment of such bonds, and such assessments shall not be reduced while such bonds are outstanding and unpaid.

SOURCES: Codes, 1942, § 2998.7-29; Laws, 1972, ch. 536, § 9; Laws, 1973, ch. 433, § 1; Laws, 1974, ch. 457, § 4; Laws, 1987, ch. 485, § 151, eff from and after January 1, 1988.

Cross References — Transactions involving property, assets, and merger of nonprofit, nonshare corporations chartered for rural waterworks or sewage disposal system purposes, and of utility districts, see §§ 19-5-251 through 19-5-257.

§ 19-5-183. Issuance, form and contents of bonds.

(1) The board of commissioners of any district created pursuant to Sections 19-5-151 through 19-5-207 may issue bonds of such district by resolution spread upon the minutes of such board. Bonds may be issued from time to time without an election being held upon the question of their issuance unless the board of commissioners of the district is presented with a petition for an election upon the question of issuance signed by twenty percent (20%) or one hundred fifty (150), whichever is the lesser, of the qualified electors residing within the district. The resolution authorizing any issue of bonds other than the initial issue shall be published in a manner similar to the publication of the resolution, as outlined in Section 19-5-157. If an election is required, it shall be held in substantial accord with the election outlined in Section 19-5-157. The cost of this election shall be borne by the district.

(2) All bonds shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting. They shall be in denominations of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), and may be registered as issued, and shall be numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued, the total amount authorized to be issued, the interest on the bond, that it is payable to bearer and that the interest to accrue thereon is evidenced by proper coupons attached thereto.

(3) Such bonds shall contain such covenants and provisions; shall be executed; shall be in such form, format, type, denomination or denominations; shall be payable as to principal and interest, at such place or places; and shall mature at such time or times, all as shall be determined by such board of commissioners and set forth in the resolution pursuant to which such bonds shall be issued. The date of maturity of such bonds shall not exceed forty (40) years from the date of the bond, except that on special improvement pollution abatement bonds, special improvement water bonds, or special improvement water and sewer bonds the date of maturity shall not exceed twenty-five (25) years from their date.

(4) All bonds shall bear interest at such rate or rates not to exceed a greater net interest cost to maturity than that allowed in Section 75-17-103, no bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest. All interest accruing on such bonds so issued shall be payable semiannually, or annually, except that the first interest coupon attached to any such bonds may be for any period not exceeding one (1) year. No interest payment shall be evidenced by more than one (1) coupon and supplemental coupons, cancelled coupons and zero interest coupons will not be permitted; no interest coupon shall vary more than twenty-five percent (25%) in interest rate from any other interest coupon in the same bond issue; and the interest rate on any one (1) interest coupon shall not exceed that allowed in Section 75-17-103.

(5) Such bonds shall be signed by the chairman and secretary-treasurer of the commission with the seal of the commission affixed thereto; however, the

coupons may bear only the facsimile signatures of such chairman and secretary-treasurer.

(6) Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of Sections 19-5-151 through 19-5-207 shall be securities within the meaning of Article 8 of the Uniform Commercial Code, being Sections 75-8-101 et seq., Mississippi Code of 1972.

(7) Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 2998.7-30; Laws, 1972, ch. 536, § 10; Laws, 1973, ch. 433, § 2; Laws, 1983, ch. 494, § 6; Laws, 1984, ch. 506, § 1, eff from and after passage (approved May 15, 1984).

§ 19-5-185. Sale of bonds; bids; refunding; validation.

The bonds issued under Sections 19-5-151 through 19-5-207 shall be sold upon sealed bids in the manner provided for in Section 31-19-25, Mississippi Code of 1972, in conformity with the provisions of Sections 19-5-151 through 19-5-207; however, bonds may be sold to the United States of America or an agency or instrumentality thereof at private sale.

Each interest rate specified in any bid must be in a multiple of one-tenth of one percent (1/10 of 1%) or in multiples of one-eighth of one percent (1/8 of 1%), and a zero rate of interest cannot be named. Any premium must be paid in bank funds as a part of the purchase price, and bids shall not contemplate the cancellation of any interest coupon or the waiver of interest or other concession by the bidder as a substitute for bank funds.

Any bonds issued under the provisions of Sections 19-5-151 through 19-5-207 may be refunded in like manner as revenue bonds of municipalities shall be refunded.

Any bonds issued under the provisions of Sections 19-5-151 through 19-5-207 shall be submitted to validation under the provisions of Sections 31-13-1 through 31-13-11, inclusive, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 2998.7-31; Laws, 1972, ch. 536, § 11, eff from and after passage (approved May 23, 1972).

§ 19-5-187. Statutory lien of bondholders; appointment of receiver in case of default.

There is hereby created a statutory lien to the nature of a mortgage lien upon any system or systems acquired or constructed in accordance with Sections 19-5-151 through 19-5-207, including all extensions and improvements thereof or combinations thereof subsequently made, which lien shall be in favor of the holder or holders of any bonds issued pursuant to said sections, and all such property shall remain subject to such statutory lien until the payment in full of the principal of and interest on said bonds. Any holder of said bonds or any of the coupons representing interest thereon may, either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction, protect and enforce such statutory lien and compel the performance of all duties required by said sections, including the making and collection of sufficient rates for the service or services, the proper accounting thereof, and the performance of any duties required by covenants with the holders of any bonds issued in accordance herewith.

If any default is made in the payment of the principal of or interest on such bonds, any court having jurisdiction of the action may appoint a receiver to administer said district and said system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against said system or systems, and for payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of Sections 19-5-151 through 19-5-207 and any covenants with bondholders.

SOURCES: Codes, 1942, § 2998.7-32; Laws, 1972, ch. 536, § 12, eff from and after passage (approved May 23, 1972).

§ 19-5-189. Tax levies.

(1)(a) Except as otherwise provided in subsection (2) of this section for levies for fire protection purposes and subsection (3) of this section for certain districts providing water service, the board of supervisors of the county in which any such district exists may, according to the terms of the resolution, levy a special tax, not to exceed four (4) mills annually, on all of the taxable real property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the district or for the retirement of any bonds issued by the district, or for both.

(b) The proceeds derived from two (2) mills of the levy authorized herein shall be included in the ten percent (10%) increase limitation under Section 27-39-321, and the proceeds derived from any additional millage levied under this subsection in excess of two (2) mills shall be excluded from such limitation for the first year of such additional levy and shall be included within such limitation in any year thereafter.

(2)(a) In respect to fire protection purposes, the board of supervisors of the county in which any such district exists on July 1, 1987, may levy a special tax annually, not to exceed the tax levied for such purposes for the 1987 fiscal year on all of the taxable real property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the fire protection district or for the retirement of any bonds issued by the district for fire protection purposes, or for both. Any such district for which no taxes have been levied for the 1987 fiscal year may be treated as having been created after July 1, 1987, for the purposes of this subsection.

(b) In respect to fire protection purposes, the board of supervisors of the county in which any such district is created after July 1, 1987, may, according to the terms of the resolution of intent to incorporate the district, levy a special tax not to exceed two (2) mills annually on all of the taxable real property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the fire protection district or for the retirement of any bonds issued by the district for fire protection purposes, or for both; however, if the district is created pursuant to a mandatory election called by the board of supervisors, in lieu of a petitioned election under Section 19-5-157, the board of supervisors may levy a special tax annually not to exceed an amount to be determined by the board of supervisors and stated in the notice of such election. The mandatory election authorized herein shall be conducted in accordance with paragraph (c) of this subsection. The special tax may be increased if such increase is authorized by the electorate pursuant to an election conducted in accordance with paragraph (c) of this subsection.

(c) The tax levy under this subsection may be increased only when the board of supervisors has determined the need for additional revenues, adopts a resolution declaring its intention so to do and has held an election on the question of raising the tax levy prescribed in this subsection. The notice calling for an election shall state the purposes for which the additional revenues shall be used and the amount of the tax levy to be imposed for such purposes. The tax levy may be increased only if the proposed increase is approved by a majority of those voting within the district. Subject to specific provisions of this paragraph to the contrary, the publication of notice and manner of holding the election within the district shall be as prescribed by law for the holding of elections for the issuance of bonds by the board of supervisors. The election shall be held only within the district.

(d) Notwithstanding any provisions of this subsection to the contrary, in any county bordering on the Gulf of Mexico and the State of Louisiana, the board of supervisors may levy not to exceed four (4) mills annually on all the taxable real property within any fire protection district, the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the fire protection district or for the retirement of any bonds issued by the district for fire protection purposes, or for both. Prior to levying the tax under this paragraph, the board of supervisors shall adopt a resolution declaring its intention to levy the tax. The resolution shall describe the amount of the tax levy and the purposes for which the proceeds of the tax will be used. The board of supervisors shall have a copy of the resolution published once a week for three (3) consecutive weeks in at least one (1) newspaper published in the county and having a general circulation therein. If no newspaper is published in the county, then notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in the county. A copy of the resolution shall also be posted at three

(3) public places in the county for a period of at least twenty-one (21) days during the time of its publication in a newspaper. If more than twenty percent (20%) of the qualified electors of the district shall file with the clerk of the board of supervisors, within twenty-one (21) days after adoption of the resolution of intent to levy the tax, a petition requesting an election on the question of the levy of such tax, then and in that event such tax levy shall not be made unless authorized by a majority of the votes cast at an election to be called and held for that purpose within the district. Notice of such election shall be given, the election shall be held and the result thereof determined, as far as is practicable, in the same manner as other elections are held in the county. If an election results in favor of the tax levy or if no election is required, the board of supervisors may levy such tax. The board of supervisors, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to have the tax imposed.

(e) Notwithstanding any provisions of this subsection to the contrary, in any county bordering on the Mississippi River in which legal gaming is conducted and in which U.S. Highway 61 intersects with Highway 4, the board of supervisors may levy a special tax not to exceed five (5) mills annually on all the taxable real and personal property within any fire protection district, except for utilities as defined in Section 77-3-3(d)(i) and (iii), the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the fire protection district or for the retirement of any bonds issued by the district for fire protection purposes, or for both. Before levying the tax under this paragraph, the board of supervisors shall adopt a resolution declaring its intention to levy the tax. The resolution shall describe the amount of the tax levy and the purposes for which the proceeds of the tax will be used. The board of supervisors shall have a copy of the resolution published once a week for three (3) consecutive weeks in at least one (1) newspaper published in the county and having a general circulation therein. If no newspaper is published in the county, then notice shall be given by publishing the resolution for the required time in some newspaper having general circulation in the county. A copy of the resolution shall also be posted at three (3) public places in the county for a period of at least twenty-one (21) days during the time of its publication in a newspaper. If more than twenty percent (20%) of the qualified electors of the district shall file with the clerk of the board of supervisors, within twenty-one (21) days after adoption of the resolution of intent to levy the tax, a petition requesting an election of the questions of the levy of such tax, then and in that event such tax levy shall not be made unless authorized by a majority of the votes cast at an election to be called and held for that purpose within the district. Notice of such election shall be given, the election shall be held and the result thereof determined, as far as is practicable, in the same manner as other elections are held in the county. If an election results in favor of the tax levy or if no election is required, the board of supervisors may levy such tax. The board of supervisors, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to have the tax imposed.

(f) Any taxes levied under this subsection shall be excluded from the ten percent (10%) increase limitation under Section 27-39-321.

(3) For any district authorized under Section 19-5-151(2), the board of supervisors shall not levy the special tax authorized in this section.

SOURCES: Codes, 1942, § 2998.7-33; Laws, 1972, ch. 536, § 13; Laws, 1986, ch. 445; Laws, 1987, ch. 507, § 15; Laws, 1988, ch. 371; Laws, 1991, ch. 459, § 1; Laws, 1997, ch. 424, § 1; Laws, 1999, ch. 304, § 7, eff from and after August 2, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — Laws, 1995, ch. 391, § 1, provides as follows:

"Section 2, Chapter 459, Laws of 1991, which repeals, effective October 1, 1995, Section 19-5-189(d), Mississippi Code of 1972, which authorizes the board of supervisors of certain counties to levy up to four (4) mills annually for the support and maintenance of fire protection districts or for the retirement of any bonds issued by a fire protection district of the county, is hereby repealed."

The United States Attorney General, by letter dated June 23, 1997, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws 1997, ch. 424, § 1. The United States Attorney General also noted that this section includes provisions that are enabling in nature. Therefore, counties are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting to be implemented pursuant to this section.

Cross References — Authority, responsibilities, and function of boards of commissioners for fire protection grading districts, as circumscribed by provisions of this section, see § 19-5-167.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-5-189 provides discretionary authority for board of supervisors to levy tax; although board of supervisors should consider recommendations of district commissioners, decision whether or not to levy tax is entirely within board's discretion; board of supervisors may decline to levy tax, notwithstanding commission's resolution requesting tax be levied. Steiner, Apr. 28, 1993, A.G. Op. #93-0277.

Medical emergency calls may be a part of the operation of a particular fire district. Since funds collected pursuant to tax levies authorized by this section may be used for the operation, support, and maintenance of the fire district, such funds may but are not required to be used by the fire district to respond to emergency medical calls received through the county dispatcher. Thayer, Mar. 12, 2004, A.G. Op. 04-0089.

§ 19-5-191. Assessment and collection of charges against improved property.

(a) Funds for debt service for special improvement pollution abatement bonds, special improvement water bonds, or special improvement water and sewer bonds issued in lieu of or in conjunction with revenue bonds and/or tax-supported bonds shall be provided by charges upon the properties benefited according to procedures set forth in this section.

(b) So long as any special improvement bond authorized by Sections 19-5-151 through 19-5-207 shall remain outstanding, it shall be the duty of the board of supervisors, at the time annual county tax levies are made, to levy such assessments as are certified to them by the district as being due and payable at a stated time. It shall be the duty of the tax collector of the county in which the district lies to collect such charges and pay the funds collected to the board of commissioners of the district for payment to interest and principal and to the retirement of bonds issued by the district in accord with the maturities schedule pertaining thereto.

(c) One of the following procedures may be utilized in providing funds as authorized by this section:

(1) Funds for debt service may be provided by charges assessed against the property abutting upon the sewer, or abutting upon the railroad and/or utility right-of-way, street, road, highway, easement or alley in which such sewer mains or water mains are installed according to the frontage thereof.

The board of commissioners of the district, after giving notice and hearing protests in the manner prescribed by Sections 21-41-5 and 21-41-7, Mississippi Code of 1972, shall by resolution spread upon its minutes define the services to be offered and the entire area to be benefited by each improvement; each such improvement may be designated as a project, or all such improvements may be designated as one project. However, if forty percent (40%) of the property owners or the owners of more than forty percent (40%) of the front footage of the property involved and actually residing on property owned by them and included within that part of any street, avenue, etc., ordered to be specially improved, or otherwise actually occupying property owned by them and included within that area designated as a project, shall file a protest, then the improvement shall not be made and the assessment shall not be made.

The resolution shall direct that the cost to be assessed against each lot or parcel of land shall be determined by dividing the entire assessable cost of the project by the total number of front feet fronting on the street, easement or other right-of-way in which all of the mains embraced within the project are installed and multiplying the quotient by the total number of front feet in any particular lot or parcel of land fronting on the street, easement or other right-of-way in which sewer mains or water mains are installed. The result thereof shall be delivered by governing authorities of the district to the county board of supervisors as the amount of special tax to be assessed against each lot or piece of ground for the owner's part of the total cost of the improvements.

The resolution, at the discretion of the governing authorities of the district, may provide for the district to pay the assessment against any property abutting a sewer or water improvement, if the property whose assessment is being paid by the district is occupied by a contributor or consumer connected to the sewer or water system who is, or will be, paying service charges at the time the assessment roll maintained by the district is confirmed; provided, however, such payment shall not exceed an amount equal to that assessed against any one hundred twenty-five (125) feet of frontage of abutting property in a project.

The resolution may, at the discretion of the governing authorities of the district, provide for the district to pay the assessment against any property abutting a section of sewer main or water main designated as necessary and essential to the overall operation of such system or systems; provided, however, no service shall be provided to any such abutting property until and unless all such payments made by the district are repaid to the district by the owners of such benefited property.

(2) Funds for debt service may be provided by charges assessed against a lot or block in a recorded subdivision of land or by other appropriately designated parcel or tract of land in accord with the following procedure:

The board of commissioners of the district, after giving notice and hearing protests in the manner prescribed by Sections 21-41-5 and 21-41-7, Mississippi Code of 1972, shall by resolution spread upon its minutes define the services to be offered and the entire area to be benefited by each improvement; each such improvement may be designated as a project, or all such improvements may be designated as one (1) project. However, if forty percent (40%) of the property owners or the owners of more than forty percent (40%) of the front footage of the property involved and actually residing on property owned by them and included within that part of any street, avenue, etc., ordered to be specially improved, or otherwise actually occupying property owned by them and included within that area designated as a project, shall file a protest, then the improvement shall not be made and the assessment shall not be made.

Charges shall be assessed in accord with the provisions of Sections 21-41-9 through 21-41-21, 21-41-25 to 21-41-39, Mississippi Code of 1972.

The resolution providing for assessments under the provisions of subsection (c)(2) of this section, at the discretion of the governing authorities of the district, may provide for the district to pay the assessment against any lot or parcel of ground not exceeding one (1) acre in size, if such property is occupied by a contributor or consumer connected to the sewer or water system who is, or will be, paying service charges at the time the assessment roll maintained by the district is confirmed.

The resolution providing for assessment of benefited properties under this procedure shall provide for appropriate payment to debt service accounts by property owners not included in the original assessment roll but benefited by facilities installed with funds provided by such assessments at, or prior to, the time at which a nonassessed but benefited property is actually served by said facilities.

SOURCES: Codes, 1942, § 2998.7-34; Laws, 1972, ch. 536, § 14; Laws, 1973, ch. 433, § 3, eff from and after passage (approved March 31, 1973).

Cross References — Authority, responsibilities, and function of boards of commissioners for fire protection grading districts, as circumscribed by provisions of this section, see § 19-5-167.

ATTORNEY GENERAL OPINIONS

The procedures in this section may not be utilized to provide funds for already existing improvements. Compretta, Jan. 25, 2005, A.G. Op. 04-0410.

§ 19-5-193. Limitations upon holders of bonds.

No holder or holders of any bonds issued pursuant to Sections 19-5-151 through 19-5-207 shall ever have the right to compel the levy of any tax to pay said bonds or the interest thereon except where the board of supervisors of the county has made a levy of a special tax and consented to the pledge thereof, all as is provided in Sections 19-5-181 and 19-5-189.

SOURCES: Codes, 1942, § 2998.7-35; Laws, 1972, ch. 536, § 15, eff from and after passage (approved May 23, 1972).

§ 19-5-195. Rates, fees, tolls or charges for use of system.

The board of commissioners of the district issuing bonds pursuant to Sections 19-5-151 through 19-5-207 shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities of its system or systems; shall prescribe penalties for the nonpayment thereof; and shall revise such rates, fees, tolls or charges from time to time whenever necessary to insure the economic operation of such system or systems. The rates, fees, tolls or charges prescribed shall be, as nearly as possible, such as will always produce revenue at least sufficient to: (a) provide for all expenses of operation and maintenance of the system or systems, including reserves therefor, (b) pay when due all bonds and interest thereon for the payment of which such revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (c) provide funds for reasonable expansions, extensions and improvements of service.

SOURCES: Codes, 1942, § 2998.7-36; Laws, 1972, ch. 536, § 16, eff from and after passage (approved May 23, 1972).

JUDICIAL DECISIONS

1. In general.

A water district could not appropriately charge an impact fee to the owner of an apartment complex where the water district established all other rates and charges in 1985 and had not changed them up to the date of the trial in 1989, the water district had never charged another customer with an impact fee, the water district had adequate capacity to serve the apartment complex, and the water district established the fee (1) in the absence of a disparate classification of the apartment complex as a separate class of customer, (2) in the absence of an explanation of the fee's purpose, and (3) in the absence of identification of any increased costs associated with the service provided to the apartment complex. Sweet Home Water & Sewer Ass'n v. Lexington Estates, Ltd., 613 So. 2d 864 (Miss. 1993).

Acceptance of a utility's services does not signify non-verbal acceptance that binds the offeree to whatever contract terms the utility proposes; thus, an apartment complex's use of a water district's water system did not signify its acceptance of a contract term to pay an impact fee charged by the water district. Sweet Home Water & Sewer Ass'n v. Lexington Estates, Ltd., 613 So. 2d 864 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

The penalty under Section 19-5-195 may include a fine and/or the disconnection of service. However, the service can only be disconnected when there is a nonpayment of a just bill and then only after proper notice and opportunity for a hearing is provided. Wright, April 5, 1996, A.G. Op. #96-0172.

A municipality may have city employees read water meters to determine an accurate amount of sewer usage as a condition of supplying sewer services, and it may terminate water or sewer service upon nonpayment of a just bill upon proper notice and an opportunity to be heard. Tutor, Aug. 29, 1997, A.G. Op. #97-0400.

A municipality may require water users to pay hookup fees or turn-on fees and monthly service charges which are reasonable, but must treat individuals and similarly situated businesses the same way under constitutional principals, and any policy it adopts must pass constitutional muster. Povail, January 9, 1998, A.G. Op. #97-0794.

A utility district does not have authority under Miss. Code Ann. § 19-5-195 to charge an "impact fee," and such a fee would amount to an unauthorized tax. Norris, March 20, 2007, A.G. Op. #07-00097, 2007 Miss. AG LEXIS 109.

§ 19-5-197. Exemption from taxation.

The property and revenue of such district shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to Sections 19-5-151 through 19-5-207 and the income therefrom shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes, and it may be so stated on the face of said bonds.

SOURCES: Codes, 1942, § 2998.7-37; Laws, 1972, ch. 536, § 17, eff from and after passage (approved May 23, 1972).

Cross References — Exemption from highway privilege taxes of buses owned by school districts or motor vehicles owned by fire protection district incorporated pursuant to sections 19-5-151 through 19-5-207, see § 27-19-27.

Exemption of all motor vehicles owned by fire protection districts incorporated pursuant to sections 19-5-151 through 19-5-207 from ad valorem taxes, see § 27-51-41.

§ 19-5-199. Construction contracts.

All construction contracts by the district where the amount of the contract shall exceed Ten Thousand Dollars ($10,000.00) shall, and construction contracts of less than Ten Thousand Dollars ($10,000.00) may, be made upon at least three (3) weeks' public notice. Such notice shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county or having general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such notice for the receipt of bids, and the last publication shall be made not more than seven (7) days prior to such date. The notice shall state the thing to be done and invite sealed proposals, to be filed with the secretary of the district, to do the work. In all such cases, before the notice shall be published, plans and specifications for the work shall be prepared by a registered professional engineer and shall be filed with the secretary of the district and there remain. The board of commissioners of the district shall award the contract to the lowest responsible bidder who will comply with the terms imposed by such commissioners and enter into bond with sufficient sureties to be approved by the commissioners in such penalty as shall be fixed by the commissioners; however, in no case shall such bond be less than the contract price, conditioned for the prompt, proper efficient performance of the contract. Contracts of less than Ten Thousand Dollars ($10,000.00) may be negotiated; however, the board of commissioners shall invite and receive written proposals for the work from at least three (3) contractors regularly engaged in the type of work involved.

SOURCES: Codes, 1942, § 2998.7-38; Laws, 1972, ch. 536, § 18, eff from and after passage (approved May 23, 1972).

§ 19-5-201. Annexations to district.

Any area adjacent to any district created pursuant to Sections 19-5-151 through 19-5-207 and situated within the same county as the district, and not being situated within the corporate boundaries of any existing municipality, may be annexed to and become a part of such district by the same procedure prescribed in Sections 19-5-153 through 19-5-159 for the original creation of the district. All costs incident to the publication of notice and all other costs incident to the hearings, election and proceedings shall be paid by the district.

The district shall have the exclusive right to provide any of the services for which it was created in the annexed territory; however, if any part of the annexed territory is then being served by another corporate agency with any such service, the district shall, at the option of the other corporate agency, either relinquish its prior right to serve the area occupied by the corporate agency or acquire by purchase the facilities of such corporate agency, together with its franchise rights to serve such area. If the annexation affects only a portion of the corporate agency's facility, the cash consideration for such purchase shall not be less than:

(a) the present-day reproduction cost, new, of the facilities being acquired, less depreciation computed on a straight-line basis; plus

(b) an amount equal to the cost of constructing any necessary facilities to reintegrate the system of the corporate agency outside the annexed area after detaching the portion to be acquired by the district; plus

(c) an annual amount payable each year for a period of ten (10) years equal to the sum of twenty-five per cent (25%) of the revenues received from sales to consumers within the annexed area during the last twelve (12) months.

If the option is for the district to purchase, upon notification thereof, the district shall be obligated to buy and pay for, and the corporate agency shall be obligated to convey to the district, all its service facilities and franchise rights in the annexed area, free and clear of all mortgage liens and encumbrances for the aforesaid cash consideration.

If the annexed territory affects all of the properties and facilities of such other corporate agency, then all of such property constituting the entire system or facility of the corporate agency shall be acquired by the district in accordance with such terms and conditions as may be agreed upon, and the district shall have the authority to assume the operation of such entire system or facility and to assume and become liable for the payment of any notes, bonds or other obligations that are outstanding against said system or facility and payable from the revenues therefrom.

If the district is notified to relinquish its prior right to serve the annexed area, the district shall grant the corporate agency a franchise to serve within the annexed territory; however, the corporate agency shall be entitled to serve only such customers or locations within the annexed area as it served on the date that such annexation became effective.

The annexed territory shall become liable for any existing indebtedness of the district and be subject to any taxes levied by the board of supervisors under Section 19-5-189 in payment of the district's indebtedness.

SOURCES: Codes, 1942, § 2998.7-39; Laws, 1972, ch. 536, § 19, eff from and after passage (approved May 23, 1972).

ATTORNEY GENERAL OPINIONS

If "sewer services" are not among those services set forth in a resolution creating a District, than the District may be authorized under certain facts to provide sewer services to an Area pursuant to Section 19-5-201. Snyder, October 25, 1996, A.G. Op. #96-0704.

§ 19-5-203. State and federal cooperation.

The board of commissioners of any district created pursuant to the provisions of Sections 19-5-151 through 19-5-207 shall have the authority to enter into cooperative agreements with the state or federal government, or both; to obtain financial assistance in the form of loans or grants as may be available from the state or federal government, or both; and to execute and deliver at private sale notes or bonds as evidence of such indebtedness in the form and subject to the terms and conditions as may be imposed by the state or federal government, or both; and to pledge the income and revenues of the district, or the income and revenues from any part of the area embraced in the district, in payment thereof. It is the purpose and intention of this section to authorize districts to do any and all things necessary to secure the financial aid or cooperation of the state or federal government, or both, in the planning, construction, maintenance or operation of project facilities.

SOURCES: Codes, 1942, § 2998.7-30; Laws, 1972, ch. 536, § 10; Laws, 1973, ch. 433, § 2, eff from and after passage (approved March 31, 1973).

§ 19-5-204. When district facilities may be required to be commensurate with those of an adjoining municipality.

When any board of supervisors creates a district within three (3) miles of the corporate boundaries of any existing municipality, the municipality is empowered to require such district to construct and maintain all facilities, whether purchased or constructed, to standards commensurate with those of the adjoining municipality; provided, however, the governing authorities of the municipalities may specifically waive compliance with any or all of such requirements.

SOURCES: Laws, 1973, ch. 493, § 1, eff from and after passage (approved April 16, 1973).

§ 19-5-205. Sections 19-5-151 through 19-5-207 are full and complete authority.

Sections 19-5-151 through 19-5-207, without reference to any other statute, shall be deemed to be full and complete authority for the creation of such districts and for the issuance of such bonds. No proceedings shall be required for the creation of such districts or for the issuance of such bonds other than those provided for and required herein. All the necessary powers to be exercised by the board of supervisors of such county and by the board of commissioners of any such district, in order to carry out the provisions of such sections, are hereby conferred.

SOURCES: Codes, 1942, § 2998.7-31; Laws, 1972, ch. 536, § 11, eff from and after passage (approved May 23, 1972).

§ 19-5-207. Financial statements.

Within ninety (90) days after the close of each fiscal year, the board of commissioners shall publish in a newspaper of general circulation in the county a sworn statement showing the financial condition of the district, the earnings for the fiscal year just ended, a statement of the water and sewer rates being charged, and a brief statement of the method used in arriving at such rates. Such statement shall also be filed with the board of supervisors creating the district.

SOURCES: Codes, 1942, § 2998.7-40; Laws, 1972, ch. 536, § 20, eff from and after passage (approved May 23, 1972).

Cross References — Restrictions on abolition, dissolution, and termination of fire protection grading districts, see § 19-5-167.

County volunteer fire department fund, see § 83-1-39.

ATTORNEY GENERAL OPINIONS

A utility district does not have authority under Miss. Code Ann. § 19-5-195 to charge an "impact fee," and such a fee would amount to an unauthorized tax. Norris, March 20, 2007, A.G. Op. #07-00097, 2007 Miss. AG LEXIS 109.

FIRE PROTECTION GRADING DISTRICTS

SEC.	
19-5-215.	Fire protection grading districts.
19-5-217.	Petition for incorporation.
19-5-219.	Hearing; findings; resolution of intent.
19-5-221.	Publication of resolution of intent.
19-5-223.	Resolution creating district.
19-5-225.	Costs; bond.
19-5-227.	Appeal to circuit court.
19-5-229.	District embracing lands in more than one county.
19-5-231.	District as governmental entity.
19-5-233.	Board of supervisors to act on behalf of district.
19-5-235.	Powers of district.
19-5-237.	Exercise of eminent domain.
19-5-239.	Annexation of area adjacent to district.
19-5-241.	Agreements with or aid and cooperation of state or federal government.

§ 19-5-215. Fire protection grading districts.

Any contiguous area situated within any county of the state, and not being situated within the corporate boundaries of any existing municipality, may become incorporated as a fire protection grading district solely for the purpose of grading by the Mississippi Rating Bureau for fire protection classification in the manner set forth in the following sections.

SOURCES: Laws, 1992, ch. 387, § 1, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Additional provisions for the creation of fire protection districts, see §§ 19-5-151 et seq.

Exemption of fire protection grading districts from ad valorem taxes, see § 27-51-41.

ATTORNEY GENERAL OPINIONS

Only process of changing fire protection grading district boundaries is by procedures outlined in Miss. Code Sections 19-5-215 et seq. Gildea, Mar. 12, 1993, A.G. Op. #93-0918.

The only mechanism available for changing or modifying boundaries of a fire protection grading district are those set forth in Sections 19-5-215 et seq., and there are no provisions for "de-annexation" of territory in an existing fire protection grading district; however, a board of supervisors might want to consider abolishing a district and re-creating it with the desired boundaries. Yancey, June 9, 2000, A.G. Op. #2000-0268.

§ 19-5-217. Petition for incorporation.

(1) A petition for the incorporation of such a district may be submitted to the board of supervisors of the county, signed by not less than twenty-five (25) owners of real property residing within the boundaries of the proposed district. Such petition shall include: (a) a statement of the necessity for the proposed district to establish legally recognized boundaries solely for fire protection grading purposes; (b) the proposed corporate name for the district; and (c) the proposed boundaries of the district.

Such petition shall be signed in person by the petitioners, with their respective residence addresses, and shall be accompanied by a sworn statement of the person or persons circulating the petition, who shall state under oath that he or they witnessed the signature of each petitioner, that each signature is the signature of the person it purports to be, and that, to the best of his or their knowledge, each petitioner was at the time of signing an owner of real property within and a resident of the proposed district.

The board of supervisors of a county, in its discretion, may initiate the incorporation of a district by resolution of the board and presentation of a petition signed by at least twenty-five (25) property owners of the area to be incorporated if at least forty (40) property owners reside within the district.

(2) With respect to the incorporation of a fire protection grading district in accordance with Sections 19-5-215 through 19-5-241, the word "owners" shall include any lessees of real property the term of whose original lease is not less than sixty (60) years and shall also include sublessees if the original lease of which they are subletting is not less than sixty (60) years.

SOURCES: Laws, 1992, ch. 387, § 2, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Petition requirements of this section not applicable where board of commissioners dissolves fire protection district and creates fire protection grading district, see § 19-5-167.

ATTORNEY GENERAL OPINIONS

The board of commissioners could cede the jurisdiction of the tract of land in the Morgantown Fire Protection District to the Walthall County Fire Protection District by order in the minutes, and the board of supervisors of Walthall County could create a fire district by following the procedures of Section 19-5-164 or a fire protection grading district by following the procedures in Sections 19-5-217 et seq. Shepard, Feb. 9, 2001, A.G. Op. #2001-0034.

§ 19-5-219. Hearing; findings; resolution of intent.

Upon the filing of such petition, or upon the adoption of a resolution declaring the intent of the board of supervisors to incorporate such district, it shall then be the duty of the board of supervisors of such county to fix a time and place for a public hearing upon the question of the public convenience and necessity of the incorporation of the proposed district solely for fire protection grading purposes. The date fixed for such hearing shall be not more than thirty (30) days after the filing of the petition, and the date of the hearing, the place at which it shall be held, the proposed boundaries of the district and the purpose of the hearing shall be set forth in a notice to be signed by the clerk of the board of supervisors of such county. Such notice shall be published in a newspaper having general circulation within such proposed district once a week for at least three (3) consecutive weeks before the date of such hearing. The first such publication shall be made not less than twenty-one (21) days before the date of such hearing and the last such publication shall be made not more than fourteen (14) days before the date of such hearing.

If, at such public hearing, the board of supervisors finds that the public convenience and necessity require the creation of the fire protection grading district to enable the Mississippi State Rating Bureau to grade the district according to its fire insurance grading schedule, the board of supervisors shall adopt a resolution making such findings and declaring its intention to create the district on a date to be specified in such resolution. Such resolution shall also designate the name of the proposed district and define its territorial limits, which shall be fixed by the board in accordance with such hearing.

SOURCES: Laws, 1992, ch. 387, § 3, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Petition requirements of this section not applicable where board of commissioners dissolves fire protection district and creates fire protection grading district, see § 19-5-167.

§ 19-5-221. Publication of resolution of intent.

A certified copy of the resolution so adopted shall be published in a newspaper having a general circulation within such proposed district once a week for at least three (3) consecutive weeks before the date specified in the resolution as the date upon which the board intends to create such district. The first such publication shall be made not less than twenty-one (21) days before the date specified, and the last such publication shall be made not more than fourteen (14) days before such date. If twenty percent (20%) or one hundred fifty (150), whichever is the lesser, of the qualified electors of such proposed district file a written petition with such board of supervisors on or before the date specified as the date of creation of the district protesting against creation of such district, the board of supervisors shall call an election on the question of creation of such district. Procedure for the election should conform to the guidelines set forth in Section 19-5-157.

SOURCES: Laws, 1992, ch. 387, § 4, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Petition requirements of this section not applicable where board of commissioners dissolves fire protection district and creates fire protection grading district, see § 19-5-167.

§ 19-5-223. Resolution creating district.

If no petition requiring an election be filed or if three-fifths of those voting in such election vote in favor of the creation of such district, the board of supervisors shall adopt a resolution creating the district as desired in the resolution of intention.

SOURCES: Laws, 1992, ch. 387, § 5, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Petition requirements of this section not applicable where board of commissioners dissolves fire protection district and creates fire protection grading district, see § 19-5-167.

§ 19-5-225. Costs; bond.

All costs incident to the publication of the notices and all other costs incident to the public hearing and election shall be paid by the board of supervisors, in its discretion, or shall be borne by the parties filing the petition. The board of supervisors, in its discretion, may require the execution of a cost bond by the parties filing the petition. Such bond shall be in the amount and with good sureties to guarantee the payment of such costs.

SOURCES: Laws, 1992, ch. 387, § 6, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-227. Appeal to circuit court.

Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudication of the board of supervisors may appeal to the circuit court of the county in the manner provided by law for appeals from orders of the board of supervisors. However, if no such appeal be taken within a period of fifteen (15) days from and after the date of the adoption of the resolution creating any such district, the creation of such district shall be final and conclusive and shall not thereafter be subject to attack in any court.

SOURCES: Laws, 1992, ch. 387, § 7, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-229. District embracing lands in more than one county.

A fire protection grading district embracing lands in more than one (1) county may be created by the following procedure:

(a) The portion of a proposed district containing the largest area of land shall be first created into a district by the board of supervisors of the county in which such largest portion is situated, such county to be known as the "incorporating county."

(b) The resolution first creating such district shall include the exact boundaries of the lands situated in the incorporating county and shall include the exact boundaries of the contiguous area in other counties to be included in the district.

(c) The resolution by the incorporating county shall designate the official name of the district.

(d) The resolution adopted by the board of supervisors of any county desiring to include contiguous lands into a district initially created as outlined above shall contain exact and identical provisions to those in the resolution by the board of supervisors of the incorporating county.

(e) The board of supervisors of the incorporating county, within sixty (60) days after the adoption of a resolution or resolutions by the board of supervisors of adjoining counties to enter lands into the district, shall enter an order on its minutes acknowledging, affirming and adjudicating the incorporation of the district.

SOURCES: Laws, 1992, ch. 387, § 8, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-231. District as governmental entity.

From and after the date of the adoption of the resolution creating any such district, such district shall be a governmental entity of the incorporating county in perpetuity under its corporate name and the supervisors, in that name, shall exercise responsibilities as required by law.

SOURCES: Laws, 1992, ch. 387, § 9, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-233. Board of supervisors to act on behalf of district.

The board of supervisors shall act on behalf of the district and may exercise any of the powers granted under the provisions of Sections 19-5-215 through 19-5-241. The board of supervisors shall record any such actions in its minutes, conducting such business during any public meeting of that body.

SOURCES: Laws, 1992, ch. 387, § 10, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-235. Powers of district.

Any fire protection grading district, acting by and through the board of supervisors on behalf of such district as its governing authority, shall have the following among other powers granted to the board of supervisors:

(a) To sue and be sued;

(b) To acquire by purchase, gift, devise and lease or any other mode of acquisition, hold and dispose of real and personal property of every kind within or without the district;

(c) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds, leases or contracts for financial advisory services;

(d) To incur debts, to borrow money, to issue negotiable bonds and to provide for the rights of the holders thereof;

(e) To pledge revenues to the payment of its obligations;

(f) To use any right-of-way, public right-of-way, easement or other similar property or property rights necessary or convenient in connection with the acquisition, improvement, operation or maintenance of the facilities of fire protection providers serving such district held by the state or any political subdivision thereof; however, the governing body of such political subdivision shall consent to such use; and

(g) To enter into agreements with state and federal agencies for loans, grants, grants-in-aid and other forms of assistance, including but not limited to participation in the sale and purchase of bonds.

SOURCES: Laws, 1992, ch. 387, § 11, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-237. Exercise of eminent domain.

The board of supervisors of such county may exercise the power of eminent domain on behalf of the district wherever and whenever public necessity and convenience so require.

SOURCES: Laws, 1992, ch. 387, § 12, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-239. Annexation of area adjacent to district.

Any area adjacent to any district created under Sections 19-5-215 through 19-5-241 and situated within the same county as the district, and not being situated within the corporate boundaries of any existing municipality, may be annexed to and become a part of such district by the same procedure prescribed in Sections 19-5-215 through 19-5-241 for the original creation of the district. All costs incident to the publication of notice and all other costs incident to the hearings, election and proceedings shall be paid by the board of supervisors.

SOURCES: Laws, 1992, ch. 387, § 13, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

§ 19-5-241. Agreements with or aid and cooperation of state or federal government.

The board of supervisors creating any such district shall have the authority to enter into cooperative agreements with the state or federal government or both; to obtain financial assistance in the form of loans or grants as may be available from the state or federal government, or both. It is the purpose and intention of this section to authorize districts to do any and all things necessary to secure the financial aid or cooperation of the state or federal government.

SOURCES: Laws, 1992, ch. 387, § 14, eff from and after July 27, 1992 (the date the United States Attorney General interposed no objection to this amendment).

TRANSACTIONS INVOLVING PROPERTY, ASSETS, AND MERGER OF NONPROFIT, NONSHARE CORPORATIONS CHARTERED FOR RURAL WATERWORKS OR SEWAGE DISPOSAL SYSTEM PURPOSES, AND OF UTILITY DISTRICTS

SEC.

19-5-251. General authorization.
19-5-253. Procedure in general; authorization by members.
19-5-255. Notice of meeting.
19-5-257. Assumption of existing indebtedness.

§ 19-5-251. General authorization.

Any nonprofit, nonshare corporation chartered under the authority of Title 79, Chapter 11, Mississippi Code of 1972, for the purpose of owning and operating rural waterworks system and/or rural sewage disposal system with the concurrence of a majority of the members of the corporation either voting in person or by proxy, at a duly called meeting, or any utility district incorporated under the authority of Section 19-5-151 et seq., Mississippi Code of 1972, with the unanimous concurrence of the board of commissioners of said district, is hereby vested with the power to sell, convey, transfer, lease, exchange, mortgage, pledge, or otherwise dispose of all or any part of its property and assets to, or to merge with, any political subdivision of the state, any other utility district or any other such nonprofit, nonshare corporation which is authorized to so acquire such corporation. Any such nonprofit, nonshare corporation or any such utility district is also vested with the authority to so acquire any other such nonprofit, nonshare corporation or any other utility district.

SOURCES: Laws, 1974, ch. 457, § 1, eff from and after passage (approved March 26, 1974).

Cross References — General powers of districts created under §§ 19-5-151 et seq., see §§ 19-5-175, 19-5-177.

District's power to provide funds for the purpose of carrying out transactions enumerated in this section, see § 19-5-181.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 19-5-253. Procedure in general; authorization by members.

(1) A sale, conveyance, transfer, lease, exchange, mortgage, pledge, or other disposition of thirty-five percent (35%) or more of the property and assets, with or without the good will, of a corporation or a merger, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, conveyance, transfer, lease, exchange, mortgage, pledge, or other disposition or merger, and directing the submission thereof to a vote at a meeting of the members, which may be either an annual or a special meeting.

(b) Written or printed notice shall be given to each member entitled to vote at such meeting within the time and in the manner provided in Section 19-5-255 for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, conveyance, transfer, lease, exchange, mortgage, pledge, or other disposition, or merger.

(c) At such meeting the members may authorize such sale, conveyance, transfer, lease, exchange, mortgage, pledge, or other disposition, or merger and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of a majority of the members present and voting.

(d) After such authorization by a vote of the members, the board of directors nevertheless, in its discretion, may abandon such sale, conveyance, transfer, exchange, mortgage, pledge, or other disposition of assets, or merger, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

(2) A sale, conveyance, transfer, lease, exchange, mortgage, pledge or other disposition of less than thirty-five percent (35%) of the property and assets, with or without the good will, of a corporation may be made by an affirmative vote of a majority of the board of directors upon such terms and

conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, as the board determines to be in the best interest of the corporation. The board of directors shall give written or printed notice of its actions to each member along with the terms and conditions thereof and the consideration to be received by the corporation.

SOURCES: Laws, 1974, ch. 457, § 1; Laws, 1990, ch. 582, § 1, eff from and after passage (approved April 9, 1990).

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:842 (distribution of assets upon dissolution of nonprofit corporation).

§ 19-5-255. Notice of meeting.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation with postage thereon paid.

SOURCES: Laws, 1974, ch. 457, § 2, eff from and after passage (approved March 26, 1974).

§ 19-5-257. Assumption of existing indebtedness.

Upon acquiring such nonprofit, nonshare corporation or utility district, the political subdivision, utility district or nonprofit, nonshare corporation shall assume any existing indebtedness of the corporation or utility district and be responsible for such indebtedness.

SOURCES: Laws, 1974, ch. 457, § 3, eff from and after passage (approved March 26, 1974).

EMERGENCY TELEPHONE SERVICE (911)

Sec.	
19-5-301.	Purpose.
19-5-303.	Definitions [Repealed effective July 1, 2014].
19-5-305.	Authorization to create emergency communications district.
19-5-307.	Board of commissioners; appointment; qualifications; terms; quorum; authority.
19-5-309.	911 designated primary emergency telephone number; secondary and nonemergency numbers; enhanced 911 service; guidelines; referenda by county electors.
19-5-311.	Methods for responding to emergency calls.

19-5-313. Emergency telephone service charges; use of excess funds [Repealed effective July 1, 2014].
19-5-315. Preexisting emergency communication districts; merger of emergency communication districts, multi-county districts.
19-5-317. Abusive calls prohibited; sanctions.
19-5-319. Automatic number and location data base information; taped records of calls; confidentiality; nonidenti-fying records to be made available to public [Repealed effective July 1, 2014].

§ 19-5-301. Purpose.

(1) The Legislature finds and declares it to be in the public interest to reduce the time required for a citizen to request and receive emergency aid, and to raise the level of competence of local public safety and 911 telecommunicators by establishing a minimum standard of training and certification for personnel involved in the answering and dispatching of calls to law enforcement, fire and emergency medical services. The provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained will provide a significant contribution to law enforcement and other public service efforts by simplifying the notification of public service personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, quicker apprehension of criminals and, ultimately, the saving of monies. Establishment of a uniform emergency number is a matter of concern and interest to all citizens of the state.

(2) The Legislature also finds and declares it to be in the public interest to reduce the time required for a citizen to request and receive emergency aid, by requiring all owners and renters of residences, buildings and structures to obtain a 911 address from the county.

SOURCES: Laws, 1987, ch. 310, § 1; Laws, 1993, ch. 536, § 1; Laws, 2010, ch. 338, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added the (1) designation and (2).

Cross References — Enhanced wireless emergency telephone service definitions, see § 19-5-331.

Confidentiality of emergency telephone calls and transmissions, see § 19-5-319.

ATTORNEY GENERAL OPINIONS

E-911 Commission could contract with Northwest Mississippi Regional Medical Center, county-owned hospital, for medical center to provide employees to perform functions of dispatcher and such other employees as may be necessary to operate E-911 system; since code does not specify how commission may provide for dispatcher to be on job 24 hours per day, commission may utilize any legal means to accomplish this task. Chaffin, Jan. 17, 1990, A.G. Op. #90-0015.

Statutes do not authorize payment of travel expense from emergency telephone surcharge; use of such funds is restricted to implementation of E-911 service. Austin, April 26, 1990, A.G. Op. #90-0252.

Miss. Code Section 19-5-301 provides that purpose of Enhanced 911 telephone service is saving of life, reduction in destruction of property, quicker apprehension of criminals, and ultimately, saving of monies. Ellis, May 4, 1993, A.G. Op. #93-0276.

Section 19-5-301 provides sufficient authority for an E-911 Commission to establish Standard Operating Procedures and write Policy and Procedure Manual for public safety answering points it creates. Daniels, Feb. 24, 1994, A.G. Op. #94-0025.

E-911 Commission may establish minimum qualifications and performance standards for individuals so long as these qualifications and standards do not conflict with those established by Board of Emergency Telecommunications Standards and Training enacted pursuant to Section 19-5-351 et seq.; standards established by Commission may be more stringent than those established by Board but cannot be less stringent than the minimum standards established statewide by Board. Daniels, Feb. 24, 1994, A.G. Op. #94-0025.

Name and address information of county residents who registered with E-911 directory is public record subject to disclosure and may be reproduced pursuant to public records request and E-911 Commission may require reimbursement of actual costs for such reproduction. Logan, March 9, 1994, A.G. Op. #94-0099.

A county E-911 Commission cannot require a state institution of higher learning to join the local emergency communications system. Tomek, October 16, 1998, A.G. Op. #98-0592.

An E-911 district is funded by telephone surcharges, and the governing authorities of a city in an E-911 district and the county in their discretion may provide additional funds; however, neither the county nor the city is obligated to provide additional funding beyond the telephone surcharge for an E-911 district. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

A board of supervisors may dissolve an E-911 district and may stop levying the telephone surcharge that funds it. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

If the board of commissioners of an E-911 district determines that identifying and naming roads is necessary to assist the board in fulfilling its statutory mandate, then the board may pay the costs associated with this function. Thomas, Mar. 28, 2003, A.G. Op. #03-0005.

If a board of commissioners determines that promulgating rules and regulations which establish minimum performance standards and procedures for telecommunicators who operate equipment which is owned by the County Emergency Telecommunications District will assist in quickly and efficiently answering and dispatching calls for emergency services to the public, then the board has the authority to do so. Delahousey, Sept. 24, 2004, A.G. Op. 04-0465.

The expenditure of E-911 funds by a county E-911 district for the purposes of counting garbage cans is not statutorily authorized. Noble, Nov. 15, 2004, A.G. Op. 04-0551.

When an E-911 system is voted in, assuming the value of the existing 911 equipment is over $100, the county may sell and dispose of the equipment after advertising as stated in Section 19-7-5. Carroll, Sept. 8, 2006, A.G. Op. 06-0390.

RESEARCH REFERENCES

ALR. Liability for failure of police response to emergency call. 39 A.L.R.4th 691.

Am Jur. 74 Am. Jur. 2d, Telecommunications § 44.

2 Am. Jur. Proof of Facts 3d 583, Inadequate response to emergency telephone call.

§ 19-5-303. Definitions [Repealed effective July 1, 2014].

For purposes of Sections 19-5-301 through 19-5-317, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Exchange access facilities" shall mean all lines provided by the service supplier for the provision of local exchange service as defined in existing general subscriber services tariffs.

(b) "Tariff rate" shall mean the rate or rates billed by a service supplier as stated in the service supplier's tariffs and approved by the Public Service Commission, which represent the service supplier's recurring charges for exchange access facilities, exclusive of all taxes, fees, licenses or similar charges whatsoever.

(c) "District" shall mean any communications district created pursuant to Section 19-5-301 et seq., or by local and private act of the State of Mississippi.

(d) "Service supplier" shall mean any person providing exchange telephone service to any service user throughout the county.

(e) "Service user" shall mean any person, not otherwise exempt from taxation, who is provided exchange telephone service in the county or state.

(f) "E911" shall mean Enhanced Universal Emergency Number Service or Enhanced 911 Service, which is a telephone exchange communications service whereby a Public Safety Answering Point (PSAP) designated by the county or local communications district may receive telephone calls dialed to the abbreviated telephone number 911. E911 Service includes lines and equipment necessary for the answering, transferring and dispatching of public emergency telephone calls originated by persons within the serving area who dial 911. Enhanced 911 Service includes the displaying of the name, address and other pertinent caller information as may be supplied by the service supplier.

(g) "Basic 911" shall mean a telephone service terminated in designated Public Safety Answering Points accessible by the public through telephone calls dialed to the abbreviated telephone number 911. Basic 911 is a voice service and does not display address or telephone number information.

(h) "Shared tenant services (STS)" shall mean any telephone service operation supplied by a party other than a regulated local exchange telephone service supplier for which a charge is levied. Such services shall include, but not be limited to, apartment building systems, hospital systems, office building systems and other systems where dial tone is derived from connection of tariffed telephone trunks or lines connected to a private branch exchange telephone system.

(i) "Private branch exchange (PBX)" shall mean any telephone service operation supplied by a party other than a regulated local exchange telephone service supplier for which a charge is not levied. Such services are those where tariffed telephone trunks or lines are terminated into a central switch which is used to supply dial tone to telephones operating within that system.

(j) "Off-premise extension" shall mean any telephone connected to a private branch exchange or a shared tenant service which is in a different building or location from the main switching equipment and, therefore, has a different physical address.

(k) "Centrex" or "ESSX" shall mean any variety of services offered in connection with any tariffed telephone service in which switching services and other dialing features are provided by the regulated local exchange telephone service supplier.

(*l*) "Commercial mobile radio service" or "CMRS" shall mean commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 USCS Section 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66. The term includes the term "wireless" and service provided by any wireless real-time, two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include service whose customers do not have ready access to 911, to a communication channel suitable only for data transmission, to a wireless roaming service or other nonlocal radio access line service, or to a private telecommunications system.

(m) "Telecommunicator" shall mean any person engaged in or employed as a telecommunications operator by any public safety, fire or emergency medical agency whose primary responsibility is the receipt or processing of calls for emergency services provided by public safety, fire or emergency medical agencies or the dispatching of emergency services provided by public safety, fire or emergency medical agencies and who receives or disseminates information relative to emergency assistance by telephone or radio.

(n) "Public safety answering point (PSAP)" shall mean any designated point of contact between the public and the emergency services such as a 911 answering point or, in the absence of 911 emergency telephone service, any other designated point of contact where emergency telephone calls are routinely answered and dispatched or transferred to another agency.

(o) "Local exchange telephone service" shall mean all lines provided by a service supplier as defined in existing general subscriber tariffs.

(p) "911 emergency communication" means any FCC mandated 911 communication, message, signal or transmission made to a public safety answering point.

(q) "Voice over Internet Protocol service" means any technology that permits a voice conversation using a voice connection to a computer, whether through a microphone, a telephone or other device, which sends a digital signal over the Internet through a broadband connection to be converted back to the human voice at a distant terminal and that delivers or is required by law to deliver a call to a public safety answering point. Voice over Internet Protocol service shall also include interconnected Voice over Internet Protocol service, which is service that enables real-time, two-way voice communications, requires a broadband connection from the user's location, requires Internet protocol compatible customer premises equipment, and allows users to receive calls that originate on the public service telephone network and to terminate calls to the public switched telephone network.

(r) "Voice over Internet Protocol service supplier" means a person or entity who provides Voice over Internet Protocol service to subscribers for a fee.

SOURCES: Laws, 1987, ch. 310, § 2; Laws, 1993, ch. 536, § 2; Laws, 1998, ch. 531, § 7; reenacted without change, Laws, 2001, ch. 569, § 1; reenacted without change, Laws, 2002, ch. 626, § 1; reenacted without change, Laws, 2003, ch. 367, § 1; reenacted and amended, Laws, 2007, ch. 593, § 1; reenacted and amended, Laws, 2010, ch. 560, § 1, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.

Chapter 593, Laws of 2007, in Section 1, provided that § 19-5-303 was being reenacted, but the bill included a minor stylistic change in § 19-5-303(c). The section is therefore being treated as having been reenacted and amended by Laws of 2007, ch. 593, § 1.

Amendment Notes — The 2010 amendment reenacted and amended the section by, in the third sentence in (*l*), substituting "have ready access to 911" for "have access to 911 or to a 911-like service"; in (n), twice inserting "designated"; and adding (p) through (r).

Cross References — Enhanced wireless emergency telephone service definitions, see § 19-5-331.

ATTORNEY GENERAL OPINIONS

E-911 money could be used to purchase any equipment reasonably necessary to implementation of E-911 system, and rationale applies with equal force to modification of building owned by City of Crystal Springs; city and E-911 district should agree to modification and expenses before undertaking of any work. Lawrence, Sept. 6, 1990, A.G. Op. #90-0665.

§ 19-5-305. Authorization to create emergency communications district.

The board of supervisors of each county may create, by order duly adopted and entered on its minutes, an emergency communications district composed of all of the territory within the county.

SOURCES: Laws, 1987, ch. 310, § 3, (became law March 10, 1987, without signature of governor) eff from and after October 20, 1987, the date the United States Attorney General interposed no objection to this amendment.

Cross References — Commercial Mobile Radio Service Board, see § 19-5-333.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-5-305 provides that board of supervisors "may" create emergency communications district; clearly, statute is discretionary. Downs, Apr. 28, 1993, A.G. Op. #93-0217.

The board of commissioners of an emergency communications district does not have authority to use E-911 surcharge funds to pay the chairman of the board a stipend or any other compensation. Balduf, Nov. 27, 2000, A.G. Op. #2000-0693.

No authority can be found for an emergency communications district to lease or charge a fee for the use of the communications system by a non-public entity. Hunter, Feb. 20, 2004, A.G. Op. 04-0058.

There is no statutory authority for an emergency communications district to regulate any private/commercial radio towers and antennas that may adversely impact the county's emergency public safety radio system. Delahousey, Sept. 10, 2004, A.G. Op. 04-0458.

§ 19-5-307. Board of commissioners; appointment; qualifications; terms; quorum; authority.

(1) When any district is created, the board of supervisors of the county creating such district may appoint a board of commissioners composed of seven (7) members to govern its affairs, and shall fix the domicile of the board at any point within the district. The members of the board shall be qualified electors of the district, two (2) of whom shall be appointed for terms of two (2) years, three (3) for terms of three (3) years, and two (2) for terms of four (4) years, dating from the date of the adoption of the ordinance creating the district. Thereafter, all appointments of the members shall be for terms of four (4) years.

(2) The board of commissioners shall have complete and sole authority to appoint a chairman and any other officers it may deem necessary from among the membership of the board of commissioners.

(3) A majority of the board of commissioners membership shall constitute a quorum and all official action of the board of commissioners shall require a quorum.

(4) The board of commissioners shall have authority to employ such employees, experts and consultants as it may deem necessary to assist the board of commissioners in the discharge of its responsibilities to the extent that funds are made available.

(5) In lieu of appointing a board of commissioners, the board of supervisors of the county may serve as the board of commissioners of the district, in which case it shall assume all the powers and duties of the board of commissioners as provided in Section 19-5-301 et seq.

(6) All emergency communications districts shall purchase, lease or lease-purchase equipment used to comply with the FCC Order, as defined in Section 19-5-333, from a products and equipment list maintained by the Mississippi Department of Information Technology Services; however, items not available from the list, or items which may be purchased at a lower price, shall be purchased in accordance with the Public Purchasing Law (Section 31-7-13).

SOURCES: Laws, 1987, ch. 310, § 4, (became law March 10, 1987, without signature of governor); Laws, 2002, ch. 626, § 2, eff from and after July 1, 2002.

ATTORNEY GENERAL OPINIONS

Authority of board of commissioners of Emergency-911 district is set forth in Miss. Code Section 19-5-307. Brown, June 4, 1993, A.G. Op. #93-0364.

Section 19-5-307(4) authorizes the board of commissioners to hire E-911 personnel and to set the salaries for E-911 employees. Henderson, August 23, 1995, A.G. Op. #95-0578.

Emergency telephone service charge funds may be expended on the salaries of E-911 operators. Walters, March 13, 1998, A.G. Op. #98-0139.

The board of commissioners of an emergency communications district does not have authority to use E-911 surcharge funds to pay the chairman of the board a stipend or any other compensation. Balduf, Nov. 27, 2000, A.G. Op. #2000-0693.

A municipality in an E-911 district may not opt out of the district and contract separately with a service provider to relay E-911 calls within the city limits to a city dispatcher. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

When a board of commissioners is set up and equipment purchases are made for an E-911 program, the equipment becomes the property of the county rather than that of the board or municipality that is to use it. Peterson, May 10, 2002, A.G. Op. #02-0203.

When a board of commissioners hires employees, it may appropriate E-911 funds to pay fringe benefits in addition to the basic salaries of the employees. Peterson, May 10, 2002, A.G. Op. #02-0203.

County 911 Emergency Communication Board of Directors can purchase a radio system for state agency vehicles upon a finding spread across their minutes that the use of the equipment will be for E-911 purposes and for the benefit of the county. Mock, Aug. 30, 2002, A.G. Op. #02-0439.

County 911 Emergency Communication Board of Directors can purchase cell phones and pay the monthly charges for use by state agencies upon a finding spread across their minutes that the use of the equipment will be for E-911 purposes and for the benefit of the county. Mock, Aug. 30, 2002, A.G. Op. #02-0439.

There is no authority for the donation of newly purchased equipment by a County 911 Emergency Communication Board of Directors to state agencies; while the communication system may be installed in state vehicles, ownership must remain with the board and be reflected on the county inventory, and use thereof must be solely for the benefit of the county. Mock, Aug. 30, 2002, A.G. Op. #02-0439.

The board of commissioners for an E-911 district has no authority to acquire and hold real property; the only statutory authority to acquire and hold property under the E-911 scheme rests with the board of supervisors. Regan, Sept. 13, 2002, A.G. Op. #02-0537.

If the board of commissioners of an E-911 district determines that identifying and naming roads is necessary to assist the board in fulfilling its statutory mandate, then the board may pay the costs associated with this function. Thomas, Mar. 28, 2003, A.G. Op. #03-0005.

A board of supervisors does not have the authority to remove a member of the Emergency Communications Commission prior to his term expiring except pursuant to some specific statutory provision. Delahousey, Nov. 7, 2003, A.G. Op. 03-0578.

No authority is granted to an emergency communications district board to hold a wireless telephone company accountable for paying an emergency telephone service charge. Delahousey, Dec. 1, 2003, A.G. Op. 03-0437.

If the board of commissioners of an emergency communications districts determines that employees such as dispatchers, communications supervisors, communications technicians, etc., are necessary to provide the mandated services, then the board has the authority, without approval from the board of supervisors, to hire these employees and pay for same from the proceeds generated by the emergency telephone service charge. Delahousey, Dec. 1, 2003, A.G. Op. 03-0437.

If a board of commissioners determines that promulgating rules and regulations which establish minimum performance standards and procedures for telecommunicators who operate equipment which is owned by the County Emergency Telecommunications District will assist in quickly and efficiently answering and dispatching calls for emergency services to the public, then the board has the authority to do so. Delahousey, Sept. 24, 2004, A.G. Op. 04-0465.

A board of supervisors has the authority to abolish an emergency communications commission previously established by it and to thereafter take over the responsibilities of that commission. McWilliams, Jan. 28, 2005, A.G. Op. 05-0001.

Either the board of commissioners of the emergency communications district, or if none, the county board of supervisors, would have the sole authority to contract with the E-911 telephone company provider. Carroll, Sept. 8, 2006, A.G. Op. 06-0390.

§ 19-5-309. 911 designated primary emergency telephone number; secondary and nonemergency numbers; enhanced 911 service; guidelines; referenda by county electors.

(1) The digits "911" shall be the primary emergency telephone number, but the involved agencies may maintain a separate secondary backup number and shall maintain a separate number for nonemergency telephone calls.

(2) The use of the digits "911" shall become the standard telephone number for public access to the various emergency services within the State of Mississippi by the year 1995. The implementation of this service shall be effected in all counties not currently operating a "911" system according to the following guidelines:

(a) Those counties not currently in the process of installing "911", or currently using "911" emergency telephone service, which have a population greater than fifteen thousand (15,000) residents shall, when so authorized by a vote of a majority of the qualified electors of the county voting on the proposal in an election held for that purpose, take the steps necessary to implement Enhanced 911 within such county using the guidelines for implementation set forth in Section 19-5-301 et seq.;

(b) Those counties not currently in the process of installing "911", or currently using "911" emergency telephone service, which have a population less than fifteen thousand (15,000) residents shall, when so authorized by a vote of a majority of the qualified electors of the county voting on the proposal in an election held for that purpose, install either "Basic 911" or "Enhanced 911" using the guidelines for implementation set forth in Section 19-5-301 et seq.

SOURCES: Laws, 1987, ch. 310, § 5; Laws, 1993, ch. 536, § 3, eff from and after July 1, 1993.

Cross References — Enhanced 911 service, see §§ 19-5-351 et seq.

ATTORNEY GENERAL OPINIONS

The designation of 911 as the emergency response number is mandatory. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

RESEARCH REFERENCES

ALR. Liability for failure of police response to emergency call. 39 A.L.R.4th 691.

Am Jur. 74 Am. Jur. 2d, Telecommunications § 44.

2 Am. Jur. Proof of Facts 3d 583, Inadequate response to emergency telephone call.

§ 19-5-311. Methods for responding to emergency calls.

The emergency telephone system shall, when so authorized by a vote of a majority of the qualified electors of the county voting on the proposal in an election held for that purpose, be designed to have the capability of utilizing at least one (1) of the following three (3) methods in response to emergency calls:

(a) "District dispatch method," which is a telephone service to a centralized dispatch center providing for the dispatch of an appropriate emergency service unit upon receipt of a telephone request for such services and a decision as to the proper action to be taken, including an E911 system.

(b) "Relay method," which is a telephone service whereby pertinent information is noted by the recipient of a telephone request for emergency services and is relayed to appropriate public safety agencies or other providers of emergency services for dispatch of an emergency service unit.

(c) "Transfer method," which is a telephone service which receives telephone requests for emergency services and directly transfers such requests to an appropriate public safety agency or other provider of emergency services.

The board of commissioners shall select the method which it determines to be the most feasible for the county.

SOURCES: Laws, 1987, ch. 310, § 6; Laws, 1993, ch. 536, § 4, eff from and after July 1, 1993.

ATTORNEY GENERAL OPINIONS

An E-911 system must be designed to use at least one of three methods of response to emergency calls: a district dispatch method, a relay method, and a transfer method; if the board of commissioners chooses the district dispatch method, then the service includes dispatching the emergency service units. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

§ 19-5-313. Emergency telephone service charges; use of excess funds [Repealed effective July 1, 2014].

(1) The board of supervisors may levy an emergency telephone service charge in an amount not to exceed One Dollar ($1.00) per residential telephone subscriber line per month, One Dollar ($1.00) per Voice over Internet Protocol subscriber account per month, and Two Dollars ($2.00) per commercial telephone subscriber line per month for exchange telephone service. Any emergency telephone service charge shall have uniform application and shall be imposed throughout the entirety of the district to the greatest extent

possible in conformity with availability of such service in any area of the district. Those districts which exist on the date of enactment of Chapter 539, Laws of 1993, shall convert to the following structure for service charge levy: If the current charge is five percent (5%) of the basic tariff service rate, the new collection shall be Eighty Cents ($.80) per month per residential subscriber line and One Dollar and Sixty Cents ($1.60) per month per commercial subscriber line. The collections may be adjusted as outlined in Chapter 539, Laws of 1993, and within the limits set forth herein.

(2) If the proceeds generated by the emergency telephone service charge exceed the amount of monies necessary to fund the service, the board of supervisors may authorize such excess funds to be expended by the county and the municipalities in the counties to perform the duties and pay the costs relating to identifying roads, highways and streets, as provided by Section 65-7-143. The board of supervisors shall determine how the funds are to be distributed in the county and among municipalities in the county for paying the costs relating to identifying roads, highways and streets. The board of supervisors may temporarily reduce the service charge rate or temporarily suspend the service charge if the proceeds generated exceed the amount that is necessary to fund the service and/or to pay costs relating to identifying roads, highways and streets. Such excess funds may also be used in the development of county or district communications and paging systems when used primarily for the alerting and dispatching of public safety entities and for other administrative costs such as management personnel, maintenance personnel and related building and operational requirements. Such excess funds may be placed in a depreciation fund for emergency and obsolescence replacement of equipment necessary for the operation of the overall 911 emergency telephone and alerting systems.

(3) No such service charge shall be imposed upon more than twenty-five (25) exchange access facilities or Voice over Internet Protocol lines per person per location. Trunks or service lines used to supply service to CMRS providers shall not have a service charge levied against them. Every billed service user shall be liable for any service charge imposed under this section until it has been paid to the service supplier. The duty of the service supplier to collect any such service charge shall commence upon the date of its implementation, which shall be specified in the resolution for the installation of such service. Any such emergency telephone service charge shall be added to and may be stated separately in the billing by the service supplier to the service user.

(4) The service supplier shall have no obligation to take any legal action to enforce the collection of any emergency telephone service charge. However, the service supplier shall annually provide the board of supervisors and board of commissioners with a list of the amount uncollected, together with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be nonpayment of such service charge. The service charge shall be collected at the same time as the tariff rate or, for nontariff services, at the time of payment, in accordance with the regular billing practice of the service supplier. Good faith compliance by the service

supplier with this provision shall constitute a complete defense to any legal action or claim which may result from the service supplier's determination of nonpayment and/or the identification of service users in connection therewith.

(5) The amounts collected by the service supplier attributable to any emergency telephone service charge shall be due the county treasury monthly. The amount of service charge collected each month by the service supplier shall be remitted to the county no later than sixty (60) days after the close of the month. A return, in such form as the board of supervisors and the service supplier agree upon, shall be filed with the county, together with a remittance of the amount of service charge collected payable to the county. The service supplier shall maintain records of the amount of service charge collected for a period of at least two (2) years from date of collection. The board of supervisors and board of commissioners shall receive an annual audit of the service supplier's books and records with respect to the collection and remittance of the service charge. From the gross receipts to be remitted to the county, the service supplier shall be entitled to retain as an administrative fee, an amount equal to one percent (1%) thereof. From and after March 10, 1987, the service charge is a county fee and is not subject to any sales, use, franchise, income, excise or any other tax, fee or assessment and shall not be considered revenue of the service supplier for any purpose.

(6) In order to provide additional funding for the district, the board of commissioners may receive federal, state, county or municipal funds, as well as funds from private sources, and may expend such funds for the purposes of Section 19-5-301 et seq.

SOURCES: Laws, 1987, ch. 310, § 7; Laws, 1990, ch. 469, § 1; Laws, 1991, ch. 457, § 1; Laws, 1991, ch. 542, § 1; Laws, 1992, ch. 309 § 1; Laws, 1993, ch. 536, § 5; Laws, 1998, ch. 531, § 8; reenacted without change, Laws, 2001, ch. 569, § 2; reenacted without change, Laws, 2002, ch. 626, § 3; reenacted without change, Laws, 2003, ch. 367, § 2; reenacted without change, Laws, 2007, ch. 593, § 2; reenacted and amended, Laws, 2010, ch. 560, § 2, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.

Amendment Notes — The 2010 amendment reenacted and amended the section by inserting "One Dollar ($1.00) per Voice over Internet Protocol subscriber account per month" in the first sentence in (1); inserting "or Voice over Internet Protocol lines" in the first sentence in (3); and inserting "or, for nontariff services, at the time of payment" in the third sentence in (4).

Cross References — Authority to expend excess funds as provided in this section for paying the costs of identifying roads, see § 65-7-143.

ATTORNEY GENERAL OPINIONS

Money collected from emergency telephone service charge may be used to purchase numerals to be affixed on or near structures to assist those seeking to respond to call for emergency help. Beasley, August 15, 1990, A.G. Op. #90-0589.

There is no apparent authority for board of commissioners to charge private alarm monitoring companies or individuals fee for false alarm to E-911 Communications Center. Brown, Sept. 24, 1992, A.G. Op. #92-0746.

Levy authorized by Miss. Code Section 19-5-313 for emergency communications district requires approval of electorate; however, no provision suggests that levy cannot be lifted if board of supervisors determine such is in best interest of county; therefore, since board of supervisors may forego district altogether, and there appears to be no provision prohibiting dissolution of district, board of supervisors may resolve to abolish emergency communications district and levy. Downs, Apr. 28, 1993, A.G. Op. #93-0217.

Miss. Code Section 19-5-313 authorizes board of supervisors to fund emergency telephone service by levying emergency telephone service charge; there is no statutory authority for board of commissioners to impose additional tariff upon city police department as condition for accessing police department to system. Ellis, May 4, 1993, A.G. Op. #93-0276.

Pursuant to Miss. Code Section 19-5-313(6), city may, in its discretion, use general fund monies in support of Emergency 911 telephone service for city. Ellis, May 4, 1993, A.G. Op. #93-0276.

Board of supervisors is authorized to fund emergency services district by levying emergency service charge under Miss. Code Section 19-5-313(1); in order to provide additional funding for district, board of commissioners may receive federal, state, county or municipal funds, as well as funds from private sources under Miss. Code Section 19-5-313(6); there is no statutory authority for emergency communications commission to charge privately-owned ambulance service for dispatching ambulances owned by the ambulance service, nor is there any statutory authority for emergency communications commission to charge fees to service providers who have access to Emergency-911 system. Brown, June 4, 1993, A.G. Op. #93-0364.

Excess funds generated by the emergency telephone service charge may be used under the authority of Section 19-5-313(2) to fund the implementation of a computerized address location system which will primarily be used for alerting and dispatching public safety entities to the proper location. Haque, March 15, 1995, A.G. Op. #95-0093.

There is no provision authorizing the County E-911 Commission to purchase and hold title to land and buildings. However, excess E-911 funds may be used by the board of supervisors for the purposes set forth in Section 19-5-313. Austin, May 10, 1995, A.G. Op. #95-0250.

Section 19-5-313 provides for the dispensation of the revenues generated under the Act. The county board of supervisors has sole authority to direct the expenditure of any excess funds generated. Ellis, June 15, 1995, A.G. Op. #95-0046.

The expenditure of the excess funds generated from the emergency telephone service charge would not be subject to approval of the board of commissioners. The expenditure of additional funding received by the board of commissioners from sources other than the emergency telephone service charge may be spent by the commissioners for E-911 purposes. See Section 19-5-313. Expenditure of these funds would require approval of the board of commissioners. Henderson, August 23, 1995, A.G. Op. #95-0578.

Based on Section 19-5-313(2), if the proceeds generated by the emergency telephone service charge exceed the amount necessary to fund the E-911 service, the board of supervisors may authorize such excess funds to be expended for identifying roads, highways and streets. This would include the erection of signs and the maintenance of such signs. Everett, May 17, 1996, A.G. Op. #96-0315.

Emergency telephone service charge funds may be expended on the salaries of E-911 operators. Walters, March 13, 1998, A.G. Op. #98-0139.

Emergency communications districts must deposit all funds received in the county depository, but such districts may have their own accounts therein; thus, a county emergency communications district could have its own separate account in the country treasury and could handle its own funds, provided that security therefor was obtained by the Chancery Clerk pursuant to Section 27-105-315. Byars, Jan. 21, 2000, A.G. Op. #2000-0009.

The purchase of defibrillators for use at emergency scenes does not fit within the statutorily established uses for excess E-911 funds. Munn, Oct. 12, 2001, A.G. Op. #01-0645.

A board of commissioners may not provide the district dispatch method for the sheriff's department and a different method, relay or transfer, for the city emergency responders, such as police, fire, and ambulance services. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

A municipality may not create its own E-911 system and directly receive the E-911 calls that originate within the municipal limits when the municipality is within an E-911 district. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

An E-911 district is funded by telephone surcharges, and the governing authorities of a city in an E-911 district and the county in their discretion may provide additional funds; however, neither the county nor the city is obligated to provide additional funding beyond the telephone surcharge for an E-911 district. Thomas, Apr. 26, 2002, A.G. Op. #02-0083.

When a board of commissioners is set up and equipment purchases are made for an E-911 program, the equipment becomes the property of the county rather than that of the board or municipality that is to use it. Peterson, May 10, 2002, A.G. Op. #02-0203.

A nominal charge (approximately $5.00) cannot be imposed by an E-911 office as a prerequisite for obtaining utility services in the county. Trapp, Jr., May 17, 2002, A.G. Op. #02-0251.

A county cannot obtain and sell to the public E-911 house number signs (to permit the efficient operation of the E-911 system). Trapp, Jr., May 17, 2002, A.G. Op. #02-0251.

The board of commissioners for an E-911 district has no authority to acquire and hold real property; the only statutory authority to acquire and hold property under the E-911 scheme rests with the board of supervisors. Regan, Sept. 13, 2002, A.G. Op. #02-0537.

Portion of E-911 funds used for the construction, maintenance, and repair of a building jointly occupied between E-911 services and other services may only relate to that portion of the building occupied by the E-911 services; the entire expense of a building which will also house other agencies may not be paid for with E-911 funds. Welch, Nov. 15, 2002, A.G. Op. #02-0654.

Provided that the E-911 board of commissioners determined that the Road Naming and Addressing Officer is a part of management personnel, maintenance personnel or related to operational requirements, as stated in the statute, then that position may be paid from excess E-911 funds. Worthy, Nov. 15, 2002, A.G. Op. #02-0669.

If the board of commissioners of an E-911 district determines that identifying and naming roads is necessary to assist the board in fulfilling its statutory mandate, then the board may pay the costs associated with this function. Thomas, Mar. 28, 2003, A.G. Op. #03-0005.

The E-911 charge of $2.00 may be levied on each of two telephone lines of the location of the internet service provider. The E-911 district may give a refund to the internet service provider for any over charges for E-911 services in the past which can be documented and which are not barred by the statute of limitations. Clanton, Oct. 17, 2003, A.G. Op. 03-0380.

The telephone service charge generated pursuant to subsection (1) of this section may not be used to purchase outdoor warning sirens. Souderes, Apr. 9, 2004, A.G. Op. 04-0122.

Excess E-911 funds may only be used for the purposes set forth in Section 19-5-313(2). Carroll, Sept. 8, 2006, A.G. Op. 06-0390.

§ 19-5-315. Preexisting emergency communication districts; merger of emergency communication districts, multi-county districts.

(1) All provisions of Section 19-5-301 et seq., with the exception of Section 19-5-307, shall be construed to amend, repeal or supersede any local and

private act under which a county or municipality has, prior to the effective date of Section 19-5-301 et seq., established an emergency communications district.

(2) The governing authorities of any municipality which has established an emergency communications district under the provisions of a local and private act enacted prior to the effective date of Section 19-5-301 et seq., may merge such district with the district established by the county in which the municipality is located, by order duly adopted and entered on the minutes of the governing authority and after the board of supervisors has duly adopted and entered on its minutes a similar order. After the county and the municipal districts have been merged, the local and private act for such municipality shall be of no force or effect.

(3) Two (2) or more counties may, by order duly adopted and entered on their minutes, establish a single emergency communications district to be composed of all of the territory within such counties provided that before the establishment thereof the board of supervisors of each of such counties has established an emergency communications district for its county in accordance with Section 19-5-305. When two (2) or more counties have established a single emergency communications district for the counties as provided under this subsection, the board of commissioners of the district shall consist of the members of the board of supervisors of each of such counties or seven (7) members from each county to be appointed as provided in Section 19-5-307.

SOURCES: Laws, 1987, ch. 310, § 8; Laws, 1993, ch. 536, § 6; Laws, 1994, ch. 484, § 2, eff from and after July 1, 1994.

Editor's Note — For the effective date of §§ 19-5-301 et seq., see note to § 19-5-301.

ATTORNEY GENERAL OPINIONS

Under Section 19-5-315(2), if a municipality had a pre-existing emergency communications system, such district may be merged with the district established by the county, but the municipality is not authorized to create its own district. The county board of supervisors has exclusive authority to establish an E-911 district. Ellis, June 15, 1995, A.G. Op. #95-0046.

§ 19-5-317. Abusive calls prohibited; sanctions.

(1) When there is not an emergency, no person shall make a telephone call to an emergency telephone service and knowingly or intentionally:

(a) Remain silent;

(b) Make abusive or harassing statements to an emergency telephone service employee;

(c) Report the existence of an emergency; or

(d) Falsely report a crime.

(2) No person shall knowingly permit a telephone under his control to be used by another person in a manner described in subsection (1) of this section.

(3) Conviction of a first offense under this section is punishable by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment for a

period of time not to exceed one (1) year, or by both such fine and imprisonment. Conviction of any subsequent offense under this section is punishable by a fine not to exceed Ten Thousand Dollars ($10,000.00) or by imprisonment for a period of time not to exceed three (3) years, or by both such fine and imprisonment.

(4) For the purpose of this section, "emergency telephone service" shall mean a service established under Section 19-5-301 et seq., Mississippi Code of 1972, or established under the provisions of a local and private act enacted prior to October 20, 1987.

SOURCES: Laws, 1992, ch. 447, § 1; Laws, 1997, ch. 409, § 1, eff from and after July 1, 1997.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-5-317 prohibits person from calling emergency telephone service and reporting existence of emergency when there is no emergency. Ellis, May 4, 1993, A.G. Op. #93-0276.

Since a first conviction for a violation of Miss. Code Section 19-5-317 does not impose a possible punishment of confinement in the state penitentiary, a first offense is a misdemeanor under the statute. Blakney, Aug. 8, 1997, A.G. Op. #97-0425.

RESEARCH REFERENCES

ALR. Misuse of telephone as minor criminal offense. 97 A.L.R.2d 503.

Validity, construction, and application of state criminal statutes forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Prohibition of obscene or harassing telephone calls in interstate or foreign communications under 47 USCS § 223. 50 A.L.R. Fed. 541.

Am Jur. 74 Am. Jur. 2d, Telecommunications § 194.

CJS. 86 C.J.S., Telegraphs, Telephones, Radio, and Television § 131.

§ 19-5-319. Automatic number and location data base information; taped records of calls; confidentiality; nonidentifying records to be made available to public [Repealed effective July 1, 2014].

(1) Automatic number identification (ANI), automatic location identification (ALI) and geographic automatic location identification (GeoALI) information that consist of the name, address and telephone number of telephone or wireless subscribers shall be confidential, and the dissemination of the information contained in the 911 automatic number and location database is prohibited except for the following purpose: the information will be provided to the Public Safety Answering Point (PSAP) on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the Public Safety Answering Point (PSAP) and disposed of in a manner which will retain that security, except

upon court order or subpoena from a court of competent jurisdiction or as otherwise provided by law.

(2) All emergency telephone calls and telephone call transmissions received pursuant to Section 19-5-301 et seq., and all recordings of the emergency telephone calls, shall remain confidential and shall be used only for the purposes as may be needed for law enforcement, fire, medical rescue or other emergency services. These recordings shall not be released to any other parties without court order or subpoena from a court of competent jurisdiction.

(3) PSAP and emergency response entities shall maintain and, upon request, release a record of the date of call, time of call, the time the emergency response entity was notified, and the identity of the emergency response entity. The emergency response entity shall maintain and, upon request, release a record of the date and time the call was received by the emergency response entity and the time the emergency response entity arrived on the scene. Requests for release of records must be made in writing and must specify the information desired. Requestors shall pay the cost of providing the information requested in accordance with the Mississippi Public Records Act of 1983, Section 25-61-1 et seq. The identity of any caller or person or persons who are the subject of any call, or the address, phone number or other identifying information about any such person, shall not be released except as provided in subsection (2) of this section.

SOURCES: Laws, 1998, ch. 531, § 11; Laws, 2000, ch. 564, § 1; reenacted without change, Laws, 2003, ch. 367, § 3; reenacted without change, Laws, 2007, ch. 593, § 3; reenacted without change, Laws, 2010, ch. 560, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication corrected a punctuation error in subsection (2). The words "needed for law enforcement, fire medical rescue or other emergency services" were changed to "needed for law enforcement, fire, medical rescue or other emergency services." The Joint Committee ratified the correction at its April 26, 2001 meeting.

Editor's Note — For repeal of this section, see § 19-5-371.

Amendment Notes — The 2010 amendment reenacted the section without change.

ATTORNEY GENERAL OPINIONS

E-911 recordings may be released to a police department for investigative purposes pursuant to the statute. Ross, Mar. 23, 2001, A.G. Op. #01-0165.

Names and addresses received from emergency calls and transmissions are confidential and can only be released by subpoena. Givens, May 24, 2002, A.G. Op. #02-0282.

The E-911 Commission is prohibited from providing a copy of its address list to the county election commission. Andrews, June 28, 2002, A.G. Op. #02-0364.

The legislature has prohibited the disclosure of automatic number identification, automatic location identification and geographic automatic location identification other than for the specified purposes. Shaw, May 23, 2003, A.G. Op. 03-0233.

This section prohibits the release of the E911 address list except for the specific purpose stated in the statute. Lee, Sept. 5, 2003, A.G. Op. 03-0484.

ENHANCED WIRELESS EMERGENCY TELEPHONE SERVICE (E-911)

SEC.
19-5-331. Definitions [Repealed effective July 1, 2014].
19-5-333. Commercial Mobile Radio Service Board; membership; powers and duties; service charges; reimbursement of expenses [Repealed effective July 1, 2014].
19-5-335. Collection of service charges; remittance to board; handling and processing costs; administration costs; registration of CMRS providers [Repealed effective July 1, 2014].
19-5-337. Confidentiality of proprietary information [Repealed effective July 1, 2014].
19-5-339. Requirement to provide enhanced 911 service; prerequisites [Repealed effective July 1, 2014].
19-5-341. Use of wireless emergency telephone service; restrictions; offense; penalties [Repealed effective July 1, 2014].
19-5-343. Collection and remittance of prepaid wireless E911 charges; no liability for provider or seller of prepaid wireless telecommunications service.

§ 19-5-331. Definitions [Repealed effective July 1, 2014].

As used in Sections 19-5-331 through 19-5-341, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) The terms “board” and “CMRS Board” mean the Commercial Mobile Radio Service Emergency Telephone Services Board.

(b) The term “automatic number identification” or “ANI” means an Enhanced 911 Service capability that enables the automatic display of the ten-digit wireless telephone number used to place a 911 call and includes “pseudo-automatic number identification” or “pseudo-ANI,” which means an Enhanced 911 Service capability that enables the automatic display of the number of the cell site and an identification of the CMRS provider.

(c) The term “commercial mobile radio service” or “CMRS” means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 USCS Section 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66. The term includes the term “wireless” and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, specialized mobile radio service, or a network radio access line. The term does not include service whose customers do not have access to 911 or to a 911-like service, to a communication channel suitable only for data transmission, to a wireless roaming service or other nonlocal radio access line service, or to a private telecommunications system.

(d) The term “commercial mobile radio service provider” or “CMRS provider” means a person or entity who provides commercial mobile radio service or CMRS service.

(e) The term "CMRS connection" means each mobile handset telephone number assigned to a CMRS customer with a place of primary use in the State of Mississippi.

(f) The term "CMRS Fund" means the Commercial Mobile Radio Service Fund required to be established and maintained pursuant to Section 19-5-333.

(g) The term "CMRS service charge" means the CMRS emergency telephone service charge levied and maintained pursuant to Section 19-5-333 and collected pursuant to Section 19-5-335.

(h) The term "distribution formula" means the formula specified in Section 19-5-333(c) by which monies generated from the CMRS service charge are distributed on a percentage basis to emergency communications districts and to the CMRS Fund.

(i) The term "ECD" means an emergency communications district created pursuant to Section 19-5-301 et seq., or by local and private act of the State of Mississippi.

(j) The term "Enhanced 911," "E9ll," "Enhanced E911 system" or "E911 system" means an emergency telephone system that provides the caller with emergency 911 system service, that directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, and that provides the capability for automatic number identification and other features that the Federal Communications Commission (FCC) may require in the future.

(k) The term "exchange access facility" means an "exchange access facility" as defined by Section 19-5-303.

(*l*) The term "FCC Order" means Federal Communications Commission orders, rules and regulations issued with respect to implementation of Basic 911 or Enhanced 911 and other emergency communication services.

(m) The term "place of primary use" means the street address representative of where the customer's use of mobile telecommunications services primarily occurs, which must be either the residential street address or the primary business street address of the customer.

(n) The term "service supplier" means a "service supplier" as defined by Section 19-5-303.

(o) The term "technical proprietary information" means technology descriptions, technical information or trade secrets and the actual or developmental costs thereof which are developed, produced or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers or agents.

SOURCES: Laws, 1998, ch. 531, § 1; reenacted without change, Laws, 2001, ch. 569, § 3; reenacted and amended, Laws, 2002, ch. 626, § 4; reenacted without change, Laws, 2003, ch. 367, § 4; reenacted without change, Laws, 2007, ch. 593, § 4; reenacted without change, Laws, 2010, ch. 560, § 4, eff from and after July 1, 2010.

Editor's Note — Laws of 2003, ch. 367, § 12, provides:

"SECTION 12. Sections 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359 and 19-5-361, shall stand repealed from and after July 1, 2007."

For repeal of this section, see § 19-5-371.

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 19-5-333. Commercial Mobile Radio Service Board; membership; powers and duties; service charges; reimbursement of expenses [Repealed effective July 1, 2014].

(1) There is created a Commercial Mobile Radio Service (CMRS) Board, consisting of eight (8) members to be appointed by the Governor with the advice and consent of the Senate. The members of the board shall be appointed as follows:

(a) One (1) member from the Northern Public Service Commission District selected from two (2) nominees submitted to the Governor by the Mississippi 911 Coordinators Association;

(b) One (1) member from the Central Public Service Commission District selected from two (2) nominees submitted to the Governor by the Mississippi Chapter of the Association of Public Safety Communication Officers;

(c) One (1) member from the Southern Public Service Commission District selected from two (2) nominees submitted to the Governor by the National Emergency Numbering Association;

(d) Two (2) members who are wireless provider representatives;

(e) One (1) member who is a consumer representing the state at large with no affiliation to the three (3) trade associations or the wireless providers;

(f) One (1) member who is a member of the Mississippi Law Enforcement Officers Association selected from two (2) nominees submitted to the Governor by the association; and

(g) One (1) member who is a member of the Mississippi Association of Supervisors selected from two (2) nominees submitted to the Governor by the association.

The initial terms of the board members, as appointed after July 1, 2002, shall be staggered as follows: the members appointed under paragraph (d) shall serve a term of two (2) years; the member appointed under paragraph (e) shall serve a term of one (1) year. After the expiration of the initial terms, the term for all members shall be four (4) years.

(2) The board shall have the following powers and duties:

(a) To collect and distribute a CMRS emergency telephone service charge on each CMRS customer whose place of primary use is within the state. The rate of such CMRS service charge shall be One Dollar ($1.00) per month per CMRS connection. In the case of prepaid wireless service, the rate and methodology for collecting and remitting the 911 charge is governed by Section 19-5-343. The CMRS service charge shall have uniform application and shall be imposed throughout the state. The board is authorized to receive all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to Section 19-5-335.

(b) To establish and maintain the CMRS Fund as an insured, interest-bearing account into which the board shall deposit all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to Section 19-5-335. The revenues which are deposited into the CMRS Fund shall not be monies or property of the state and shall not be subject to appropriation by the Legislature. Interest derived from the CMRS Fund shall be divided equally to pay reasonable costs incurred by providers in compliance with the requirements of Sections 19-5-331 through 19-5-341 and to compensate those persons, parties or firms employed by the CMRS Board as contemplated in paragraph (d) of this subsection. The interest income is not subject to the two percent (2%) cap on administrative spending established in Section 19-5-335(3).

(c) To establish a distribution formula by which the board will make disbursements of the CMRS service charge in the following amounts and in the following manner:

(i) Out of the funds collected by the board, thirty percent (30%) shall be deposited into the CMRS Fund, and shall be used to defray the administrative expenses of the board in accordance with Section 19-5-335(3) and to pay the actual costs incurred by such CMRS providers in complying with the wireless E911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing or maintaining all necessary data, hardware and software required in order to provide such service as well as the incremental costs of operating such service. Sworn invoices must be presented to the board in connection with any request for payment and approved by a majority vote of the board prior to any such disbursement, which approval shall not be withheld or delayed unreasonably. In no event shall any invoice for payment be approved for the payment of costs that are not related to compliance with the wireless E911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, and any rules and regulations which may be adopted by the FCC with respect to implementation of wireless E911 services.

(ii) The remainder of all funds collected by the board, which shall not be less than seventy percent (70%) of the total funds collected by the board, shall be distributed by the board monthly based on the number of CMRS connections in each ECD for use in providing wireless E911 service, including capital improvements, and in their normal operations. For purposes of distributing the funds to each ECD, every CMRS provider shall identify to the CMRS Board the ECD to which funds should be remitted based on zip code plus four (4) designation, as required by the federal Uniform Sourcing Act.

An ECD board that has within its jurisdiction zip code designations that do not adhere to county lines shall assist CMRS providers in determining the appropriate county to which funds should be distributed.

(d) To contract for the services of accountants, attorneys, consultants, engineers and any other persons, firms or parties the board deems necessary to effectuate the purposes of Sections 19-5-331 through 19-5-341.

(e) To obtain from an independent, third-party auditor retained by the board annual reports to the board no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS Fund during the preceding fiscal year and all disbursements to ECDs during the preceding fiscal year. The board shall provide a copy of the annual reports to the Chairmen of the Public Utilities Committees of the House of Representatives and Senate.

(f) To retain an independent, third-party accountant who shall audit CMRS providers at the discretion of the CMRS Board to verify the accuracy of each CMRS providers' service charge collection. The information obtained by the audits shall be used solely for the purpose of verifying that CMRS providers accurately are collecting and remitting the CMRS service charge and may be used for any legal action initiated by the board against CMRS providers.

(g) To levy interest charges at the legal rate of interest established in Section 75-17-1 on any amount due and outstanding from any CMRS provider who fails to remit service charges in accordance with Section 19-5-335(1).

(h) To promulgate such rules and regulations as may be necessary to effect the provisions of Sections 19-5-331 through 19-5-341.

(i) To make the determinations and disbursements as provided by Section 19-5-333(2)(c).

(j) To maintain a registration database of all CMRS providers and to impose an administrative fine on any provider that fails to comply with the registration requirements in Section 19-5-335.

(3) The CMRS service charge provided in subsection (2)(a) of this section and the service charge provided in Section 19-5-357 to fund the training of public safety telecommunicators shall be the only charges assessed to CMRS customers relating to emergency telephone services.

(4) The board shall serve without compensation; however, members of the board shall be entitled to be reimbursed for actual expenses and travel costs associated with their service in an amount not to exceed the reimbursement authorized for state officers and employees in Section 25-3-41, Mississippi Code of 1972.

(5) It is the Legislature's intent to ensure that the State of Mississippi shall be Phase I compliant by July 1, 2005. For purposes of this subsection, Phase I compliant means the mandate by the FCC that requires any carrier when responding to a PSAP to define and deliver data related to the cell site location and the caller's call-back number.

SOURCES: Laws, 1998, ch. 531, § 2; reenacted without change, Laws, 2001, ch. 569, § 4; reenacted and amended, Laws, 2002, ch. 626, § 5; reenacted and amended, Laws, 2003, ch. 367, § 5; reenacted without change, Laws, 2007, ch. 593, § 5; Laws, 2010, ch. 560, § 5, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.

Amendment Notes — The 2010 amendment reenacted and amended the section, by, in the introductory paragraph in (1), substituting "eight (8) members" for "seven (7) members"; adding (1)(g) and making a related change; and adding the third sentence in (2)(a).

ATTORNEY GENERAL OPINIONS

The Commercial Mobile Radio Service Board may not hire staff. McDow, May 28, 1999, A.G. Op. #99-0239.

The Commercial Mobile Radio Service (CMRS) Board, rather than the county, is entitled to receive all revenues derived from CMRS emergency telephone service charges including "911" charges collected by wireless telephone service providers. Rollins, Sept. 21, 2001, A.G. Op. #01-0596.

No authority is granted to an emergency communications district board to hold a wireless telephone company accountable for paying an emergency telephone service charge. Delahousey, Dec. 1, 2003, A.G. Op. 03-0437.

An emergency communications district may not require detailed records or an accounting of funds from the Commercial Mobile Radio Service board. Delahousey, Dec. 1, 2003, A.G. Op. 03-0437.

Based on this section, the Commercial Mobile Radio Service Board should pay wireless service providers for the costs associated with the implementation of Phase 1 Enhanced Wireless 911 service as required by the FCC. The E-911 Commission is not responsible for paying the wireless service providers for such costs. Andrews, Jan. 23, 2004, A.G. Op. 03-0686.

§ 19-5-335. Collection of service charges; remittance to board; handling and processing costs; administration costs; registration of CMRS providers [Repealed effective July 1, 2014].

(1) Each CMRS provider shall act as a collection agent for the CMRS Fund and shall, as part of the provider's normal monthly billing process, collect the CMRS service charges levied upon CMRS connections pursuant to Section 19-5-333(2) (a) from each CMRS connection to whom the billing provider provides CMRS service and shall, not later than thirty (30) days after the end of the calendar month in which such CMRS service charges are collected, remit to the board the net CMRS service charges so collected after deducting the fee authorized by subsection (2) of this section. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge.

(2) Each CMRS provider shall be entitled to deduct and retain from the CMRS service charges collected by such provider during each calendar month an amount not to exceed one percent (1%) of the gross aggregate amount of such CMRS service charges so collected as reimbursement for the costs incurred by such provider in collecting, handling and processing such CMRS service charges.

(3) The board shall be entitled to retain from the CMRS service charges collected during each calendar month an amount not to exceed two percent (2%) of the money allocated to the CMRS Fund as reimbursement for the costs incurred by the board in administering Sections 19-5-331 through 19-5-341 including, but not limited to, retaining and paying the independent, third-party auditor to review and disburse the cost recovery funds and to prepare the reports contemplated by Sections 19-5-331 through 19-5-341.

(4) Each CMRS provider shall register with the CMRS Board and shall provide the following information upon registration:

(a) The company name of the provider;
(b) The marketing name of the provider;
(c) The publicly traded name of the provider;
(d) The physical address of the company headquarters and of the main office located in the State of Mississippi; and
(e) The names and addresses of the providers' board of directors/owners.

Each CMRS provider shall notify the board of any change in the information prescribed in paragraphs (a) through (e). The board may suspend the disbursement of cost recovery funds to, and may impose an administrative fine in an amount not to exceed Ten Thousand Dollars ($10,000.00) on any provider which fails to comply with the provisions of this subsection.

SOURCES: Laws, 1998, ch. 531, § 3; reenacted without change, Laws, 2001, ch. 569, § 5; reenacted and amended, Laws, 2002, ch. 626, § 6; reenacted without change, Laws, 2003, ch. 367, § 6; reenacted without change, Laws, 2007, ch. 593, § 6; reenacted without change, Laws, 2010, ch. 560, § 6, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 19-5-337. Confidentiality of proprietary information [Repealed effective July 1, 2014].

All technical proprietary information submitted to the board or to the independent, third-party auditor as provided by Section 19-5-333(2) (d) shall be retained by the board and such auditor in confidence and shall be subject to review only by the board. Further, notwithstanding any other provision of the law, no technical proprietary information so submitted shall be subject to subpoena or otherwise released to any person other than to the submitting CMRS provider, the board and the aforesaid independent, third-party auditor without the express permission of the administrator and the submitting CMRS provider. General information collected by the aforesaid independent, third-party auditor shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers of revenues attributable to an individual CMRS provider.

SOURCES: Laws, 1998, ch. 531, § 4; reenacted without change, Laws, 2001, ch. 569, § 6; reenacted without change, Laws, 2002, ch. 626, § 7; reenacted

without change, Laws, 2003, ch. 367, § 7; reenacted without change, Laws, 2007, ch. 593, § 7; reenacted without change, Laws, 2010, ch. 560, § 7, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 19-5-339. Requirement to provide enhanced 911 service; prerequisites [Repealed effective July 1, 2014].

In accordance with the Federal Communication Commission Order, no CMRS provider shall be required to provide wireless Enhanced 911 Service until such time as (a) the provider receives a request for such service from the administrator of a Public Safety Answering Point (PSAP) that is capable of receiving and utilizing the data elements associated with the service; (b) funds are available pursuant to Section 19-5-333; and (c) the local exchange carrier is able to support the wireless Enhanced 911 system.

SOURCES: Laws, 1998, ch. 531, § 5; reenacted without change, Laws, 2001, ch. 569, § 7; reenacted without change, Laws, 2002, ch. 626, § 8; reenacted without change, Laws, 2003, ch. 367, § 8; reenacted without change, Laws, 2007, ch. 593, § 8; reenacted without change, Laws, 2010, ch. 560, § 8, eff July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 19-5-341. Use of wireless emergency telephone service; restrictions; offense; penalties [Repealed effective July 1, 2014].

Wireless emergency telephone service shall not be used for personal use and shall be used solely for the use of communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or imprisonment of not more than thirty (30) days in the county jail, or both such fine and imprisonment. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds One Hundred Dollars ($100.00), the offense may be prosecuted as a felony and punishable by a fine of not more than Five Thousand Dollars ($5,000.00) and imprisonment of not more than three (3) years, or both such fine and imprisonment.

SOURCES: Laws, 1998, ch. 531, § 6; reenacted without change, Laws, 2001, ch. 569, § 8; reenacted without change, Laws, 2002, ch. 626, § 9; reenacted without change, Laws, 2003, ch. 367, § 9; reenacted without change, Laws, 2007, ch. 593, § 9; reenacted without change, Laws, 2010, ch. 560, § 9, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 19-5-343. Collection and remittance of prepaid wireless E911 charges; no liability for provider or seller of prepaid wireless telecommunications service.

(1) **Definitions.** — For purposes of this section, the following terms shall have the following meanings:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(b) "Department" means the Mississippi Department of Revenue.

(c) "Prepaid wireless E911 charge" means the charge that is required to be collected by a seller from a consumer in the amount established under subsection (2).

(d) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

(e) "Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(f) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(g) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(h) "Wireless telecommunications service" means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended.

(2) **Collection and remittance of E911 charge.** — (a) Amount of Charge. The prepaid wireless E911 charge shall be One Dollar ($1.00) per retail transaction.

(b) Collection of charge. The prepaid wireless E911 charge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 charge shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) Application of charge. For purposes of paragraph (b) of this subsection, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of Section 27-65-19(1)(e)(v)3.c.

(d) Liability for charge. The prepaid wireless E911 charge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless E911 charges that the seller collects from consumers as provided in subsection (3), including all such charges that the seller is deemed to have collected where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(e) Exclusion of E911 charge from base of other taxes and fees. The amount of the prepaid wireless E911 charge that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) Resetting of charge. The prepaid wireless E911 charge shall be increased or reduced, as applicable, upon any change to the state E911 charge on postpaid wireless telecommunications service under Section 19-5-333. Such increase or reduction shall be effective on the effective date of the change to the postpaid charge or, if later, the first day of the first calendar month to occur at least sixty (60) days after the enactment of the change to the postpaid charge. The department shall provide not less than thirty (30) days of advance notice of such increase or reduction on the commission's Web site.

(3) **Administration of E911 charge.** — (a) Time and manner of payment. Prepaid wireless E911 charges collected by sellers shall be remitted to the department at the times and in the manner provided by Chapter 65 of Title 27 with respect to sales and use taxes. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to Chapter 65 of Title 27.

(b) Seller administrative deduction. A seller shall be permitted to deduct and retain two percent (2%) of prepaid wireless E911 charges that are collected by the seller from consumers.

(c) Audit and appeal procedures. The audit and appeal procedures applicable to Chapter 65 of Title 27 shall apply to prepaid wireless E911 charges.

(d) Exemption documentation. The department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for sales and use tax purposes under Chapter 65 of Title 27.

(e) Disposition of remitted charges. The department shall pay all remitted prepaid wireless E911 charges over to the Commercial Mobile Radio Service Emergency Telephone Services Board within thirty (30) days of receipt, for use by the board in accordance with the purposes permitted by Section 19-5-333, after deducting an amount, not to exceed two percent (2%) of collected charges, that shall be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 charges. The amount of the distribution shall be determined by dividing the population of the communications district by the state population, and then multiplying that quotient times the total revenues remitted to the department after deducting the amount authorized in this subsection.

(4) **No Liability.** — (a) No liability regarding 911 service. No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number, address, location or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

(b) No provider of prepaid wireless service shall be liable for damages to any person or entity resulting from or incurred in connection with the provider's provision of assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any investigation or other law enforcement activity by such law enforcement officer that the provider believes in good faith to be lawful.

(c) Incorporation of postpaid 911 liability protection. In addition to the protection from liability provided by paragraphs (a) and (b) of this subsection, each provider and seller shall be entitled to the further protection from liability, if any, that is provided to providers and sellers of wireless telecommunications service that is not prepaid wireless telecommunications service pursuant to Section 19-5-361.

(5) **Exclusivity of prepaid wireless E911 charge.** — The prepaid wireless E911 charge imposed by this section shall be the only E911 governmental funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless telecommunications service.

(6) Notwithstanding any other method or formula of collection and/or distribution of the emergency telephone service charges as specified in this section and as such collection and/or distribution method or formula is specified in this section, a provider may collect and distribute the said charges in any other manner applicable to satisfy the intent and requirements of this section.

SOURCES: Laws, 2010, ch. 560, § 13, eff from and after July 1, 2010.

EMERGENCY TELECOMMUNICATIONS; BOARD; STANDARDS AND TRAINING; BASIC AND ENHANCED 911

SEC.
19-5-351. Board of Emergency Telecommunications Standards and Training;

composition; terms; votes; Chairman and Vice Chairman; adoption of rules and regulations; meetings; reports; expenses.
19-5-353. Certification requirement for telecommunicators; minimum standards of training; suspension, cancellation, or recall of certificate; reprimands; notice, hearing and appeal; reapplication; penalties for employment of telecommunicator not duly qualified; other training not precluded [Repealed effective July 1, 2013].
19-5-355. Approval and completion of training; training expenses; issuance of certification.
19-5-356. Continuing education courses.
19-5-357. Telephone subscriber service charge to fund training; collection of charge; special fund; use of monies in fund; training expenses [Repealed effective July 1, 2013].
19-5-359. Requirement of service suppliers and other parties to provide access to basic or enhanced 911 service; time to comply [Repealed effective July 1, 2014].
19-5-361. 911 service suppliers entitled to same limitations of liability as provided to state, state agencies and local governments [Repealed effective July 1, 2014].

§ 19-5-351. Board of Emergency Telecommunications Standards and Training; composition; terms; votes; Chairman and Vice Chairman; adoption of rules and regulations; meetings; reports; expenses.

(1) There is hereby created the Board of Emergency Telecommunications Standards and Training, which shall consist of twelve (12) members and shall operate with the administrative assistance of the Office of Law Enforcement Planning, Department of Public Safety.

(2) The Board of Emergency Telecommunications Standards and Training shall consist of one (1) representative from each of the following: the Law Enforcement Training Academy; the State Fire Academy; the Mississippi Chapter of the Associated Public Safety Communications Officers, Incorporated; the Mississippi Chapter of the National Emergency Number Association; the State Board of Health, Emergency Medical Services Division; the Mississippi Justice Information Center; the Mississippi Sheriff's Association; the Mississippi Law Enforcement Officers' Association; the Mississippi Fire Chief's Association; the Mississippi Association of Chiefs of Police; the Mississippians for Emergency Medical Service Association; and a representative from the county wherein a nuclear facility is located. Each member organization shall have one (1) vote in the selection of training programs, for a total of twelve (12) votes. A majority vote shall decide all matters brought before the board.

(a) The initial term limits of the board shall be according to the following:

(i) Associated Public Safety Communications Officers' appointee, one (1) year.

(ii) Mississippi Law Enforcement Officers' Association appointee, one (1) year.

(iii) Mississippi Fire Chief's Association appointee, one (1) year.

(iv) National Emergency Number Association appointee, two (2) years.

(v) Mississippi Sheriff's Association appointee, two (2) years.

(vi) Mississippians for Emergency Medical Service Association appointee, two (2) years.

(vii) Mississippi Association of Chiefs of Police appointee, two (2) years.

(viii) The county wherein is located a nuclear facility shall have one (1) appointee for two (2) years.

(b) After the initial period, each appointee of the associations listed above shall serve for terms of four (4) years each, but may be replaced at any time by the association appointing such representative.

(c) The remaining four (4) members of the board shall serve at the discretion of the director of the agency represented.

(3) Members of the board shall serve without compensation but shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to such service, including mileage, as provided in Section 25-3-41, Mississippi Code of 1972.

(4) There shall be a chairman and a vice chairman of the board elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business, but the board shall meet at least every six (6) months.

(5) The Director of the Office of the Board on Law Enforcement Standards and Training shall call an organizational meeting of the board not later than thirty (30) days after July 1, 1993.

(6) The board shall report annually to the Governor and the Legislature on its activities and may make such other reports as it deems desirable.

SOURCES: Laws, 1993, ch. 536, § 7, eff from and after July 1, 1993.

ATTORNEY GENERAL OPINIONS

Purpose of Board of Emergency Telecommunications Standards and Training is to establish minimum standards of training for local public safety and 911 telecommunicators; employment standards of third parties are not within board's jurisdiction. Walker Sept. 1, 1993, A.G. Op. #93-0589.

E-911 Commission may establish minimum qualifications and performance standards for individuals so long as these qualifications and standards do not conflict with those established by Board of Emergency Telecommunications Standards and Training enacted pursuant to Section 19-5-351 et seq.; standards established by Commission may be more stringent than those established by Board but cannot be less stringent than the minimum standards established statewide by Board. Daniels, Feb. 24, 1994, A.G. Op. #94-0025.

§ 19-5-353. Certification requirement for telecommunicators; minimum standards of training; suspension, cancellation, or recall of certificate; reprimands; notice, hearing and appeal; reapplication; penalties for employment of telecommunicator not duly qualified; other training not precluded [Repealed effective July 1, 2013].

(1) The initial minimum standard of training for local public safety and 911 telecommunicators shall be determined by the Board of Emergency Telecommunications Standards and Training. All courses approved for minimum standards shall be taught by instructors certified by the course originator as instructors for such courses.

(2) The minimum standards may be changed at any time by the Board of Emergency Telecommunications Standards and Training.

(3) Changes in the minimum standards may be made upon request from any bona fide public safety, emergency medical or fire organization operating within the State of Mississippi. Requests for change shall be in writing submitted to either the State Law Enforcement Training Academy; the State Fire Academy; the Mississippi Chapter of the Associated Public Safety Communications Officers, Incorporated; the Mississippi Chapter of the National Emergency Number Association; the Mississippi State Board of Health, Emergency Medical Services Division; the Mississippi Justice Information Center; the Mississippi Sheriff's Association; the Mississippi Fire Chief's Association; the Mississippi Association of Chiefs of Police; or Mississippians for Emergency Medical Service.

(4) The minimum standards in no way are intended to restrict or limit any additional training which any department or agency may wish to employ, or any state or federal required training, but to serve as a basis or foundation for basic training.

(5) Persons in the employment of any public safety, fire, 911 PSAP or emergency medical agency as a telecommunicator on July 1, 1993, shall have three (3) years to be certified in the minimum standards courses provided they have been employed by such agency for a period of more than one (1) year prior to July 1, 1993.

(6) Persons having been employed by any public safety, fire, 911 PSAP or emergency medical agency as a telecommunicator for less than one (1) year prior to July 1, 1993, shall be required to have completed all the requirements for minimum training standards, as set forth in Sections 19-5-351 through 19-5-361, within one (1) year from July 1, 1993. Persons certified on or before July 1, 1993, in any course or courses chosen shall be given credit for these courses, provided the courses are still current and such persons can provide a course completion certificate.

(7) Any person hired to perform the duties of a telecommunicator in any public safety, fire, 911 PSAP or emergency medical agency after July 1, 1993, shall complete the minimum training standards as set forth in Sections 19-5-351 through 19-5-361 within twelve (12) months of their employment or

within twelve (12) months from the date that the Board of Emergency Telecommunications Standards and Training shall become operational.

(8) Professional certificates remain the property of the board, and the board reserves the right to either reprimand the holder of a certificate, suspend a certificate upon conditions imposed by the board, or cancel and recall any certificate when:

(a) The certificate was issued by administrative error;

(b) The certificate was obtained through misrepresentation or fraud;

(c) The holder has been convicted of any crime involving moral turpitude;

(d) The holder has been convicted of a felony; or

(e) Other due cause as determined by the board.

When the board believes there is a reasonable basis for either the reprimand, suspension, cancellation of, or recalling the certification of a telecommunicator, notice and opportunity for a hearing shall be provided. Any telecommunicator aggrieved by the findings and order of the board may file an appeal with the chancery court of the county in which such person is employed from the final order of the board. Any telecommunicator whose certification has been cancelled pursuant to Sections 19-5-351 through 19-5-361 may reapply for certification but not sooner than two (2) years after the date on which the order of the board canceling such certification became final.

(9) Any state agency, political subdivision or "for-profit" ambulance, security or fire service company that employs a person as a telecommunicator who does not meet the requirements of Sections 19-5-351 through 19-5-361, or that employs a person whose certificate has been suspended or revoked under provisions of Sections 19-5-351 through 19-5-361, is prohibited from paying the salary of such person, and any person violating this subsection shall be personally liable for making such payment.

(10) These minimum standards and time limitations shall in no way conflict with other state and federal training as may be required to comply with established laws or regulations.

(11) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1993, ch. 536, § 8; Laws, 2001, ch. 490, § 1; Laws, 2003, ch. 374, § 1; reenacted and amended, Laws, 2004, ch. 442, § 1; Laws, 2006, ch. 355, § 1; Laws, 2010, ch. 325, § 1, eff from and after passage (approved Mar. 15, 2010.)

Editor's Note — Laws, 2001, ch. 490, § 3, as amended by Laws, 2003, ch. 374, § 3, provides:

"SECTION 3. Sections 19-5-353 and 19-5-357, Mississippi Code of 1972, shall be repealed on July 1, 2004."

Laws of 2004, ch. 442, § 3 provides:

"SECTION 3. Section 3, Chapter 490, Laws of 2001, as amended by Section 3, Chapter 374, Laws of 2003, which provides for the repeal of Sections 19-5-353 and 19-5-357, Mississippi Code of 1972, is repealed."

Amendment Notes — The 2010 amendment extended the date of the repealer in (11) by substituting "July 1, 2013" for "July 1, 2010"; and made a minor stylistic change.

RESEARCH REFERENCES

ALR. Liability for failure of police response to emergency call. 39 A.L.R.4th 691.

Admissibility of tape recording or transcript of "911" emergency telephone call. 3 A.L.R.5th 784.

Am Jur. 74 Am. Jur. 2d, Telecommunications § 44.

§ 19-5-355. Approval and completion of training; training expenses; issuance of certification.

(1) When it shall be determined that training is required, a request for training shall be submitted to the Board of Emergency Telecommunications Standards and Training for approval of course, course location, estimated cost and base weekly salary of the telecommunicator to attend the course of instruction. Upon approval of training and successful completion of the training course, all expenses associated with the obtaining of such training shall be reimbursed. The local government entity or emergency service provider shall be reimbursed for the full salary and benefits of each telecommunicator completing such training.

(2) Upon completion of any course required in these minimum training standards, each telecommunicator shall be issued a certificate which shall signify successful completion of such training. When all minimum standards training has been met, copies of certificates of course completion shall be forwarded to the Board of Emergency Telecommunications Standards and Training which will then issue "Certification of Minimum Standards" to such telecommunicator. Certifications shall be issued separately for law enforcement, fire and emergency medical service telecommunicators.

SOURCES: Laws, 1993, ch. 536, § 9, eff from and after July 1, 1993.

ATTORNEY GENERAL OPINIONS

Board of Emergency Telecommunications Standards and Training is established to set minimum standards of training; once telecommunicator has met minimum training standards board has to issue "Certification of Minimum Standards" to telecommunicator; board has no authority to require training beyond this point. Walker Sept. 1, 1993, A.G. Op. #93-0589.

§ 19-5-356. Continuing education courses.

(1) After any telecommunicator has received his or her initial minimum standard of training and has been issued the "Certification of Minimum Standards," such telecommunicator shall complete forty-eight (48) hours of continuing education courses every three (3) years. The continuing education courses, required pursuant to this subsection, must be approved by the Board of Emergency Telecommunications Standards and Training.

(2) The Board of Emergency Telecommunications Standards and Training shall reimburse each agency for the expense incurred by telecommunicators who attend approved continuing education courses as required by this section.

(3) For purposes of this section, "telecommunicator" means any person engaged in or employed as a telecommunications operator by any public safety, fire or emergency medical agency whose primary responsibility is the receipt or processing of calls for emergency services provided by public safety, fire or emergency medical agencies or the dispatching of emergency services provided by public safety, fire or emergency medical agencies and who receives or disseminates information relative to emergency assistance by telephone or radio.

SOURCES: Laws, 2010, ch. 560, § 14, eff from and after July 1, 2010.

§ 19-5-357. Telephone subscriber service charge to fund training; collection of charge; special fund; use of monies in fund; training expenses [Repealed effective July 1, 2013].

(1) From and after July 1, 1993, a service charge of Five Cents (5¢) shall be placed on each subscriber service line within the State of Mississippi. This service charge shall apply equally to both private and business lines and shall apply to all service suppliers operating within the State of Mississippi. This subscriber service charge level shall be reviewed periodically to determine if the service charge level is adequate or excessive, and adjustments may be made accordingly.

(2) Every billed service user shall be liable for any service charge imposed under this section until it has been paid to the service supplier. The duty of the service supplier to collect any such service charge shall commence upon the date of its implementation. Any such minimum standards telephone service charge shall be added to, and may be stated separately in, the billing by the service supplier to the service user.

(3) The service supplier shall have no obligation to take any legal action to enforce the collection of any emergency telephone service charge. However, the service supplier shall annually provide the Board of Emergency Telecommunications Standards and Training with a list of the amount uncollected, together with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be nonpayment of such service charge. The service charge shall be collected at the same time as the tariff rate in accordance with the regular billing practice of the service supplier. Good faith compliance by the service supplier with this provision shall constitute a complete defense to any legal action which may result from the service supplier's determination of nonpayment and/or the identification of service users in connection therewith.

(4) The amounts collected by the service supplier attributable to the minimum standards telephone service charge shall be deposited monthly into a special fund hereby created in the State Treasury. The amount of service charge collected each month by the service supplier shall be remitted to the

special fund no later than sixty (60) days after the close of the month. A return, in such form as prescribed by the State Tax Commission, shall be filed with the Tax Commission, together with a remittance of the amount of service charge collected payable to the special fund. The service supplier shall maintain records of the amount of service charge collected for a period of at least three (3) years from date of collection. From the gross receipts to be remitted to the special fund, the service supplier shall be entitled to retain as an administrative fee, an amount equal to one percent (1%) thereof. This service charge is a state fee and is not subject to any sales, use, franchise, income, excise or any other tax, fee or assessment, and shall not be considered revenue of the service supplier for any purpose. All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for fees under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control.

(5) The proceeds generated by the minimum standards service charge shall primarily be used by the board pursuant to legislative appropriation to fund the minimum standards training program for public safety telecommunicators within the State of Mississippi. These funds shall be applied on a first-come first-served basis, which shall be determined by the date of application. All city, county and state public safety telecommunicators, including those employed by city and/or county supported ambulance services and districts, shall be eligible to receive these funds to meet minimum standards training requirements. No “for-profit” ambulance, security or fire service company operating in the private sector shall be qualified to receive these minimum standards training funds unless the company is on contract with a local government to provide primary emergency response. Law enforcement officers, fire and emergency medical personnel who are used as part-time or “fill-in” telecommunicators shall also be eligible to receive funding for this minimum standards training, provided they serve at least eight (8) hours per month as a telecommunicator. However, emergency medical personnel who are used as part-time or “fill-in” telecommunicators and are employed by any for-profit ambulance company operating in the private sector shall be eligible to receive funding for the minimum standards training, provided they serve at least twenty (20) hours per week as a telecommunicator. These funds may also be expended by the Board of Emergency Telecommunications Standards and Training to administer the minimum standards program for such things as personnel, office equipment, computer software, supplies and other necessary expenses.

(6) The Board of Emergency Telecommunications Standards and Training shall be authorized to reimburse any public safety agency or emergency medical service for meals, lodging, travel, course fees and salary during the

time spent training, upon successful completion of such course. Funds may also be expended to train certain individuals to become certified instructors of the various courses included in these minimum standards in order to conduct training within the State of Mississippi.

(7) If the proceeds generated by the minimum standards service charge exceed the amount of monies necessary to fund the service, the Board of Emergency Telecommunications Standards and Training may authorize such excess funds to be available for advanced training, upgraded training and recertification of instructors. Any funds remaining at the close of any fiscal year shall not lapse into the State General Fund but shall be carried over to the next fiscal year to be used as a beginning balance for the fiscal requirements of such year.

(8) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1993, ch. 536, § 10; Laws, 1998, ch. 458, § 3; Laws, 2001, ch. 490, § 2; Laws, 2003, ch. 374, § 2; reenacted and amended, Laws, 2004, ch. 442, § 2; Laws, 2006, ch. 355, § 2; Laws, 2010, ch. 325, § 2, eff from and after passage (approved Mar. 15, 2010.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compliation, Revision and Publication of Legislation corrected a typographical error in the third sentence of subsection (4). The words "A return, in such form as prescribed by the State Tax Commission and shall be filed" were changed to "A return, in such form as prescribed by the State Tax Commission, shall be filed." The Joint Committee ratified the correction at its April 26, 2001 meeting.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Laws of 2001, ch. 490, § 3, as amended by Laws of 2003, ch. 374, § 3, provides:

"SECTION 3. Sections 19-5-353 and 19-5-357, Mississippi Code of 1972, shall be repealed on July 1, 2004."

Laws of 2004, ch. 442, § 3 provides:

"SECTION 3. Section 3, Chapter 490, Laws of 2001, as amended by Section 3, Chapter 374, Laws of 2003, which provides for the repeal of Sections 19-5-353 and 19-5-357, Mississippi Code of 1972, is repealed."

Amendment Notes — The 2010 amendment extended the date of the repealer in (8) by substituting "July 1, 2013" for "July 1, 2010."

Cross References — Mississippi Sales Tax Law, see § 27-65-1, et seq.

ATTORNEY GENERAL OPINIONS

Section 19-5-357(5) clearly indicates that the legislature intended that telecommunicators employed by "for profit" ambulance service companies operating in the private sector are required to receive minimum standards training, however, their companies are not qualified to receive training funds collected by the State. Abadie, April 19, 1996, A.G. Op. #96-0250.

§ 19-5-359. Requirement of service suppliers and other parties to provide access to basic or enhanced 911 service; time to comply [Repealed effective July 1, 2014].

(1) Any service supplier operating within the State of Mississippi shall be required to provide access to the locally designated PSAP by dialing the three (3) digits "911" from any telephone subscriber line within such service area. Where technically available, each service supplier shall, at a county's request, provide "Enhanced 911" services. Where this capability does not technically exist, "Basic 911" shall be available as a minimum.

(2) From and after December 31, 1993, any person, corporation or entity operating a "shared tenant service" type of telephone system shall be required to provide as a minimum the location and telephone number information for each and every extension or user on such "shared tenant" system to the regulated local exchange telephone service provider where the service provider can utilize such information in the delivery of "Enhanced 911" emergency telephone service. This information shall consist of data in a format that is compatible with the service supplier's requirements in order to provide such location and telephone number information automatically in the event a call to 911 is placed from such a system. It shall be the responsibility of the operator or provider of "STS" telephone services to maintain the data pertaining to each extension operating on such system.

(3) Any CMRS providers operating within the State of Mississippi shall be required to have all trunks or service lines supplying all cellular sites and personal communications network sites contain the word "cellular" in the service supplier listing for each trunk or service line to facilitate operator identification of cellular and PCN telephone calls placed to 911.

(4) Any service suppliers engaged in the offering or operating of "Centrex" or "ESSX" telephone service within the State of Mississippi shall cause the actual location of all extensions operating in this service to be displayed at the PSAP whenever a 911 call is placed from said extension. This feature shall not be required in areas where Enhanced 911 is not in operation but shall be required should such area upgrade to Enhanced 911 service.

(5) Any local exchange telephone service suppliers offering "quick-serve" or "soft" dial tone shall provide address location information to the PSAP operating in the area where the "quick-serve" or "soft" dial tone is in operation so that the PSAP may have this address information displayed should a call to 911 be placed from such location. It shall be the responsibility of the service supplier to determine in which emergency service number area the "quick-serve" or "soft" dial tone is located.

(6) Any service suppliers operating within the State of Mississippi and providing Enhanced 911 telephone service shall have a reasonable time period, not to exceed five (5) years, to comply with data and operational standards as they are set forth by the National Emergency Number Association. This time period shall apply to data format, equipment supplied for PSAP use and for the length of time required for data updates relating to service user address

information, emergency service number updates and other data updates as may be required.

SOURCES: Laws, 1993, ch. 536, § 11; Laws, 1994, ch. 321, § 1; Laws, 1994, ch. 484, § 1; Laws, 1998, ch. 531, § 9; reenacted without change, Laws, 2001, ch. 569, § 9; reenacted without change, Laws, 2002, ch. 626, § 10; reenacted without change, Laws, 2003, ch. 367, § 10; reenacted without change, Laws, 2007, ch. 593, § 10; reenacted without change, Laws, 2010, ch. 560, § 10, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted the section without change.
Cross References — Procedure for installation of enhanced 911 service in certain counties, § 19-5-309.

§ 19-5-361. 911 service suppliers entitled to same limitations of liability as provided to state, state agencies and local governments [Repealed effective July 1, 2014].

Any Emergency 911 service supplier, Emergency 911 Voice over Internet Protocol service supplier, and Emergency 911 CMRS provider operating within the State of Mississippi, its employees, directors, officers, agents and subcontractors, shall be entitled to receive the limitations of liability as provided to the state, or any agency or local government of the state, pursuant to Section 11-46-15, Mississippi Code of 1972.

SOURCES: Laws, 1993, ch. 536, § 12; Laws, 1998, ch. 531, § 10; reenacted without change, Laws, 2001, ch. 569, § 10; reenacted without change, Laws, 2002, ch. 626, § 11; reenacted without change, Laws, 2003, ch. 367, § 11; reenacted without change, Laws, 2007, ch. 593, § 11; reenacted and amended, Laws, 2010, ch. 560, § 11, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 19-5-371.
Amendment Notes — The 2010 amendment reenacted and amended the section by deleting "telephone" following "Any Emergency 911," and inserting "Emergency 911 Voice over Internet Protocol service supplier."

911 ADDRESS

SEC.
19-5-369. Residence owner or renter required to obtain 911 address.

§ 19-5-369. Residence owner or renter required to obtain 911 address.

Each person who owns or rents a residence, building or structure shall obtain a 911 address.

SOURCES: Laws, 2010, ch. 338, § 1, eff from and after July 1, 2010.

Editor's Note — Laws of 2010, ch. 338, § 3 provides:

"Section 1 of this act shall be codified as a new section in Chapter 5, Title 19, Mississippi Code of 1972."

REPEAL OF CERTAIN PROVISIONS

SEC.
19-5-371. Repeal of §§ 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359, and 19-5-361.

§ 19-5-371. Repeal of §§ 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359, and 19-5-361.

Sections 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359 and 19-5-361 shall stand repealed from and after July 1, 2014.

SOURCES: Laws, 2003, ch. 367, § 12; reenacted and amended, Laws, 2007, ch. 593, § 12; Laws, 2010, ch. 560, § 12, eff from and after July 1, 2010.

Editor's Note — Laws of 2003, ch. 367, § 13 provides:

"SECTION 13. Section 12 of this act shall be codified as a new section in Title 19, Chapter 5, Mississippi Code of 1972."

This section, prior to its codification and amendment by Laws, 2003, ch. 367, § 12, was formerly an editor's note under §§ 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359, and 19-5-361.

Amendment Notes — The 2010 amendment extended the date of the repealer for §§ 19-5-303, 19-5-313, 19-5-319, 19-5-331, 19-5-333, 19-5-335, 19-5-337, 19-5-339, 19-5-341, 19-5-359 and 19-5-361 by substituting "July 1, 2014" for "July 1, 2010."

CHAPTER 7

Property and Facilities

Sec.
19-7-1. Acquisition of certain real estate.
19-7-3. Disposal of real estate.
19-7-5. Disposal of personal property.
19-7-7. Insurance on county property.
19-7-8. Repealed.
19-7-9. Tagging of motor vehicles.
19-7-11. Erection or renovation of courthouse or jail.
19-7-13. Employment of janitor and assistants.
19-7-15. Employment of caretaker of county lands.
19-7-17. Employment of caretaker of county lands; duties of caretaker.
19-7-19. Employment of caretaker of county lands; minutes of board to be sole authority.
19-7-21. Counties conveying land for state park may lease retained mineral interests.
19-7-23. Furnishing of courthouse.
19-7-25. Providing books and bookcase for courtroom.
19-7-27. Providing bulletin boards for legal notices.
19-7-29. Maintenance of courthouse yard.
19-7-31. Law libraries.
19-7-32. Repealed.
19-7-33. Regulation of parking on courthouse and other county lands.
19-7-35. Procurement of artesian well on county property.
19-7-37. Use of part of oil severance tax funds for building and permanent improvements.
19-7-39. Maintenance and repair of public or private nonprofit cemeteries in certain counties.
19-7-41. Authority of county boards of supervisors to exercise power of eminent domain for construction of penitentiaries.

§ 19-7-1. Acquisition of certain real estate.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors shall have power to accept as a gift, or to purchase for the county, so much real estate, in fee simple, at the place where the courts may be required to sit, as may be convenient and necessary for the building and use of the courthouse and jail, and, at any convenient place in the county, property for fire protection purposes and homes and farms for the poor, the purchase money to be paid out of the county treasury, and the title to the property be made to and in the name of the county.

The board of supervisors of any county may acquire, by lease or purchase, grounds and buildings or may erect buildings on grounds owned by the county or road district, to be used by the county or road district in storing and preserving road machinery, trucks, teams or other county or road district property. The same shall be paid for out of the general fund or road district fund.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

(1) The board of supervisors shall have power to accept as a gift, or to purchase for the county, so much real estate, in fee simple, at the place where the courts may be required to sit, as may be convenient and necessary for the building and use of the courthouse, county facilities and jail, and, at any convenient place in the county, property for fire protection purposes and homes and farms for the poor, the purchase money to be paid out of the county treasury, and the title to the property be made to and in the name of the county.

(2) Subject to the provisions of Section 65-7-91, the board of supervisors of any county may purchase or lease grounds and buildings or may erect buildings on grounds owned or leased by the county, to be used by the county in storing and preserving road machinery, trucks or other county property. The same shall be paid for out of the general fund of the county or out of road maintenance and bridge funds.

SOURCES: Codes, 1857, ch. 59, art 20; 1871, § 1367; 1880, § 2148; 1892, § 303; 1906, § 322; Hemingway's 1917, § 3695; Hemingway's 1921 Supp. § 3811j; 1930, §§ 215, 217; 1942, §§ 2891, 2893; Laws, 1920, ch. 242; Laws, 1922, ch. 258; Laws, 1962, ch. 241; Laws, 1966, Ex Sess ch. 27 § 1; Laws, 1988 Ex Sess, ch. 14, § 10; Laws, 1990, ch. 414, § 1, eff from and after July 1, 1990.

Cross References — Power of board of supervisors to provide poor homes or farms, see Miss. Const. Art. 14, § 262.

Requirement that boards of supervisors erect and maintain courthouses, see § 19-3-41.

Issuance of county bonds and notes for purchasing land for county buildings, acquiring county homes for indigents, etc., see § 19-9-1.

Levy of special tax for erection, repairing, etc., of the courthouse, jail and other county buildings, see §§ 19-9-93, 19-9-115.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Authority to purchase land and erect buildings for county home and farm, see § 43-31-3.

ATTORNEY GENERAL OPINIONS

County Board of Supervisors may purchase amount of land necessary for purpose of operating county central maintenance shop for repair of county's road equipment and various other county vehicles and for purpose of using land at same time as county barn for two of county's road districts; whether ten (10) acres is required is question of fact. Downs, August 23, 1990, A.G. Op. #90-0602.

Miss. Code Section 19-7-1 provides for acquisition of real estate by counties and for guidance as to where such office may be located; words "county facilities" includes offices for supervisors. McKenzie, Feb. 1, 1993, A.G. Op. #92-0982.

If Board of Supervisors determine, consistent with fact, that additional public parking spaces are needed for county buildings and county business, Board may entertain lease of private property for such purposes. Gex Nov. 22, 1993, A.G. Op. #93-0733.

If a determination is made by the board of supervisors that additional public parking is needed for the county courthouse, then the board may lease private property for such purposes. See section 19-3-40. Dickerson, March 2, 1995, A.G. Op. #95-0080.

A beat system county board of supervisors may provide itself with offices at the county seat in the courthouse, but not elsewhere. In the individual districts, the board of supervisors may only establish stations for the working of public roads together with necessary buildings therefor. See Section 65-7-91. Greathree, April 26, 1996, A.G. Op. #96-0181.

Section 19-7-1 authorizing the board to purchase real estate for a courthouse and other governmental purposes would also allow a county to lease such buildings. If the work is not being performed by the county, it is not required to be contracted for by public bids. The county may not pay more than fair market value for the lease of the building. Gex, June 7, 1996, A.G. Op. #96-0305.

If a board of supervisors finds that the business of the county requires the purchase of a building for office space for county employees, that a particular tract and building is suitable for the needs of the county, and that the purchase price therefor is at or below the fair market value thereof, such board of supervisors may then pursuant to section 19-3-40 utilize public funds to purchase and equip such building for usage as office space by county employees. Shaw, Dec. 19, 1997, A.G. Op. #97-0802.

Quitman County may acquire property from a school district that it will in turn convey to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

A county board of supervisors may only establish and construct a jail upon land owned by the county itself in fee simple, and may not establish and construct a jail upon land belonging to an economic development district even though the economic development district was created by and is a subdivision of the county. Smith, April 7, 2000, A.G. Op. #2000-1080.

When a board of supervisors purchases real or personal property for the county's use or for a department of the county, a deed for real property or a certificate of title or bill of sale for personal property should use language such as "[name of] County, a political subdivision of the State of Mississippi", or some other such similar language. Ross, Jr., April 7, 2000, A.G. Op. #2000-0153.

A board of supervisors has the authority to lease private property to locate a communications tower. The terms of the lease may provide for the county to maintain, work or construct such roads as are necessary or convenient to provide the county access to the leased premises. However, there is no authority for a county to maintain private roads that are not necessary for county purposes in exchange for consideration of any sort. Munn, Dec. 12, 2003, A.G. Op. 03-0623.

Each county is required under Miss. Code Ann. § 19-7-1 to build a jail within the corporate limits of the municipality where the courts are required to sit. A municipality is obligated to grant a special exception to its zoning ordinances unless it is determined, consistent with the facts, that construction of a county jail would create a public nuisance or a clear and present danger to the public health and welfare. Yancey, Mitchell, March 23, 2007, A.G. Op. #07-00120, 2007 Miss. AG LEXIS 75.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 470 et seq., 478.

CJS. 20 C.J.S., Counties §§ 250-252.

§ 19-7-3. Disposal of real estate.

(1) In case any of the real estate belonging to the county shall cease to be used for county purposes, the board of supervisors may sell, convey or lease the same on such terms as the board may elect and may, in addition, exchange the same for real estate belonging to any other political subdivision located within the county. In case of a sale on a credit, the county shall have a lien on the same for the purchase money, as against all persons, until paid and may enforce the lien as in such cases provided by law. The deed of conveyance in such cases shall be executed in the name of the county by the president of the board of supervisors, pursuant to an order of the board entered on its minutes.

(2)(a) Before any lease, deed or conveyance is executed, the board shall publish at least once each week for three (3) consecutive weeks, in a public newspaper of the county in which the land is located, or if no newspaper be published in said county then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the county-owned land and to accept sealed competitive bids for the leasing or sale. The board shall thereafter accept bids for the lease or sale and shall award the lease to the highest bidder in the manner provided by law.

(b) The board of supervisors of any county may contract for the professional services of a Mississippi-licensed real estate broker to assist in the marketing and sale or lease of the property for a reasonable commission, consistent with or lower than the market rate, for services rendered to be paid from the sale or lease proceeds.

(3) Whenever the board of supervisors shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes (a) that any county-owned property is no longer needed for county or related purposes and is not to be used in the operation of the county, (b) that the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the county, and (c) that the use of the county property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the board of supervisors of such county shall be authorized and empowered, in its discretion, to sell, convey, lease, or otherwise dispose of same for any of the purposes set forth herein.

(4)(a) In addition to such authority as is otherwise granted under this section, the board of supervisors, in its discretion, may sell, lease, or otherwise convey property to any person or legal entity without public notice, without having to advertise for and accept competitive bids and without appraisal, with or without consideration, and on such terms and conditions as the parties may agree if the board of supervisors finds and determines, by resolution duly and lawfully adopted and spread upon its official minutes:

(i) That the subject property is real property acquired by the county:

1. By reason of a tax sale;

2. Because the property was abandoned or blighted; or

3. In a proceeding to satisfy a county lien against the property;

(ii) That the subject property is blighted and is located in a blighted area;

(iii) That the subject property is not needed for governmental or related purposes and is not to be used in the operation of the county;

(iv) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the county; and

(v) That the use of the property for the purpose for which it is to be conveyed will promote and foster the development and improvement of the community in which it is located or the civic, social, educational, cultural, moral, economic or industrial welfare thereof; the purpose for which the property is conveyed shall be stated.

(b) All costs associated with a conveyance under this subsection shall be paid by the person or entity to whom the conveyance is made.

(c) Any deed or instrument of conveyance executed pursuant to the authority granted under this subsection shall contain a clause of reverter providing that title to the property will revert to the county if the person or entity to whom the property is conveyed does not fulfill the purpose for which the property was conveyed and satisfy all conditions imposed on the conveyance within two (2) years of the date of the conveyance.

(d) In any such deed or instrument of conveyance, the county shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same.

(5) Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3 or Section 57-75-37.

SOURCES: Codes, 1892, § 304; § 1906, § 323; Hemingway's 1917, § 3696; 1930, § 216; 1942, § 2892; Laws, 1976, ch. 484; Laws, 2003, ch. 483, § 2; Laws, 2004, ch. 400, § 1; Laws, 2005, ch. 315, § 9; Laws, 2007, ch. 579, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision, and Publication corrected a typographical error in the final sentence of this section. The words "industrial welfare thereof. The board" were changed to "industrial welfare thereof, the board". The Joint Committee ratified the correction at the May 8, 1997 meeting of the Committee.

Cross References — Authority of board of supervisors to contract with real estate brokers for the purpose of selling county-owned land, see § 19-3-41.

Disposition of surplus airport land, see § 57-7-1.

Execution of quit claim deeds by boards of supervisors where question arises in relation to conveyance of title, see § 89-1-25.

JUDICIAL DECISIONS

1. In general.
2. Contracts.

1. In general.

Land which was never used for county purposes until purchased by county for purpose of immediate conveyance to the state for a state park, and which, after such conveyance to the state, was used by the county as contemplated in its purchase, did not "cease" to be used for county purposes within the meaning of this section, and consequently board of supervisors did not have express authority to convey to private party the oil and other minerals in part of such land, even though in the conveyance to the state the county had reserved to itself all the oil and other mineral rights in such lands. Pike County v. Bilbo, 198 Miss. 775, 23 So. 2d 530 (1945), suggestion of error sustained in part, overruled in part, 198 Miss. 775, 23 So. 2d 672 (1945).

Power of a county which has purchased and conveyed land to the state for a state park to reserve to itself all the minerals therein does not confer implied power upon the county to convey to private party the minerals in such land. Pike County v. Bilbo, 198 Miss. 775, 23 So. 2d 530 (1945), suggestion of error sustained in part, overruled in part, 198 Miss. 775, 23 So. 2d 672 (1945).

The power conferred by this section to sell and convey real estate belonging to the county does not embrace, nor authorize the exercise of, the power to lease such property for a term of years. AMOCO v. Marion County, 187 Miss. 148, 192 So. 296 (1939).

A board of supervisors was not estopped to bring an action to cancel a release of a part of the courthouse grounds by the execution of the lease, or by having brought a former suit for cancellation and then dismissing it, and by permitting others to acquire a lease of a part of the courthouse land, since the board of supervisors cannot be estopped by its negligence or affirmative acts with reference to such land. AMOCO v. Marion County, 187 Miss. 148, 192 So. 296 (1939).

A county is not a municipal corporation proper, and before the corresponding section in Code 1892 became operative was not authorized to sell land, though the same was not applied to a public use. Jefferson County v. Grafton, 74 Miss. 435, 21 So. 247, 60 Am. St. R. 516 (1897).

Purchasers claiming title to land under a deed from a county cannot, in a suit by the county to cancel their deed, defend on the ground that the county was at the time of its purchase without power to acquire the property. Jefferson County v. Grafton, 74 Miss. 435, 21 So. 247, 60 Am. St. R. 516 (1897).

2. Contracts.

A resolution of a county board of supervisors to lease a county-owned nursing home was duly and lawfully spread upon its minutes and the technical omission of spreading the lease contract on the minutes of the board did not invalidate the lease contract inasmuch as the lease contract was recorded in the land records of the chancery clerk and the parties to the contract had fulfilled the requirements of the contract for 13 years. Community Extended Care Ctrs., Inc. v. Board of Supervisors, 756 So. 2d 798 (Miss. Ct. App. 1999).

Validity of contract by county board of supervisors to convey realty requires an entry of an order on the minutes of the board. Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945).

County board of supervisors could not give effect to an order by the board at a former term, setting out a contract to convey realty, but which was not entered on the minutes, by entering the original order nunc pro tunc. Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945).

Where alleged contract to purchase realty from county was not entered upon the minutes of the county board of supervisors, purchaser was not entitled to confirmation of his title, cancellation of deeds conveying the realty to others as clouds on his title, or specific performance of the contracts, notwithstanding that the purchaser had immediately entered into possession. Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945).

Person dealing with county board of supervisors has duty to see that his contract is legal. Martin v. Newell, 198 Miss. 809, 23 So. 2d 796 (1945).

ATTORNEY GENERAL OPINIONS

County board of supervisors has broad discretion in setting terms of any lease of property belonging to county which has ceased to be used for county purposes; if board makes required factual findings, it may exercise discretion to lease surplus property to school, subject to certain statutory limitations, without appraisal or advertisement. Thomas, April 4, 1990, A.G. Op. #90-0228.

Any lease of real estate belonging to a county must be in exchange for good and valuable consideration, so as not to constitute a donation, unless it is to an organization expressly eligible, by statute, to receive county donations. Walters, May 20, 1992, A.G. Op. #92-0348.

Although county boards of supervisors have authority to regulate size and manner of culvert installation on county rights-of-way which connect private rights-of-way to county roads, and there is apparently no prohibition that would prevent county from adopting and implementing culvert ordinance and installation procedure, county has no authority to sell culverts to private individuals or levy culvert "permit fees". Younger, Dec. 3, 1992, A.G. Op. #92-0766.

County may, pursuant to and in accordance with Miss. Code Section 19-7-3, entertain direct lease of county office space to chamber of commerce provided requirements of statute are present. Mullins, Jan. 27, 1993, A.G. Op. #93-0029.

Mississippi legislature has made specific provision by general law at Miss. Code Section 19-7-3 for disposal of real estate; this section does not contemplate use of real estate agent, but mandates publication of sales of county property in local newspaper. Chaffin, May 26, 1993, A.G. Op. #93-0346.

Board of supervisors may furnish equipment and county labor to develop soccer fields on county property which will be available to all citizens of county where property was not surplus property no longer needed by county and therefore could not be leased pursuant to statute. Gex, June 16, 1993, A.G. Op. #93-0425.

Section 59-7-211 does not contemplate sale or lease of property owned by county through port commission which has ceased to be used by both county and port commission; board of supervisors upon finding by port commission that property is not needed for port commission purposes, and at request of port commission, may authorize sale of property that has ceased to be used for any county or port commission purpose pursuant to Section 19-7-3. Cox, March 23, 1994, A.G. Op. #94-0174.

A conveyance under Section 19-7-3 may not be for nominal consideration but must be for good and valuable consideration. The board may exchange the county land, no longer used for county purposes, for other lands constituting good and valuable consideration. Keyes, August 31, 1995, A.G. Op. #95-0599.

If a non-profit day care center is the highest bidder, or if the board makes the necessary findings, consistent with fact, as outlined in Section 19-7-3, then the board of supervisors may lease county-owned property to the day care center. Palmer, March 15, 1996, A.G. Op. #96-0118.

Under Section 19-7-3, a county owned community hospital cannot convey real property, at fair market value or otherwise, to a physician as an incentive or inducement to establish a practice in the community. Genin, October 25, 1996, A.G. Op. #96-0690.

A board of supervisors may not renovate a county building at county expense and make it available to out-of-county medical specialists at no charge to those physicians. Webb, May 15, 1998, A.G. Op. #98-0246.

If county board makes the findings required by the statute and leases the building to physicians for use as a medical clinic, the lease may contain a provision whereby the physicians are responsible for renovating all or a portion of the building and all costs associated with said renovation be applied toward the lease payments, resulting in no actual lease payments being made for several months, so long as the renovations increase the value of the property to the county. Webb, May 15, 1998, A.G. Op. #98-0246.

A board of supervisors may lease property no longer needed for county purposes for the market value; so long as the lessee does not use such property for an unlawful purpose or in contravention of the terms of the lease, the lessee may use the property for any purpose. Webb, May 15, 1998, A.G. Op. #98-0246.

A board of supervisors may, upon a finding of fact consistent with this section, encompassed in an order spread upon its minutes, lease real property without consideration to an economic development district created by a board of supervisors pursuant to Section 19-5-99. Webb, May 15, 1998, A.G. Op. #98-0246.

A county could lease property upon which gravel deposits were located pursuant to the statute if it was able to make the proper findings of fact, and such lease could contain provisions for royalties to be paid and minerals to be provided to the county; alternatively, the county could also hire or contract with someone to mine the gravel for its own use and sell any excess. Munn, July 31, 1998, A.G. Op. #98-0408.

Section 65-7-121 did not apply to the abandonment or reconveyance of property to the successor in interest to the person who conveyed the property originally to the county for the construction of a public road; instead, the county was required to use the procedure outlined in this section to dispose of the property. Shepard, March 5, 1999, A.G. Op. #99-0092.

If the findings and determinations listed in subsections (a), (b), and (c) of this section are made and spread upon the minutes, a county may sell property without seeking competitive bids, but still must receive the fair market value thereof, as determined as a matter of fact by the board of supervisors. Mitchell, July 30, 1999, A.G. Op. #99-0378.

A county board of supervisors may proceed with the statutory scheme for disposing of surplus real property without obtaining an appraisal; however, the board must still determine factually that the price offered constitutes fair market value. Griffin, July 30, 1999, A.G. Op. #99-0356.

The owners of a community hospital could not convey a hospital parking lot to a nonprofit corporation as it could not be found as a matter of fact that the parking lot had ceased to be used for county purposes. Galloway, March 17, 2000, A.G. Op. #2000-0114.

A county board of supervisors, upon making a finding consistent with fact of the requisite elements of the statute, and encompassing such finding in an order spread upon its minutes, may convey a tract without advertising for competitive bids and must, as a part of such findings, make a factual determination of the fair market value of the tract and of the value and sufficiency of the consideration to be received therefor. Yancey, May 12, 2000, A.G. Op. #2000-0260.

A county had the authority to sell or lease undeveloped land owned by the board of supervisors, but part of a hospital campus, to a city for the purpose of constructing a water well, assuming that the requisite findings were made, based on the fact that the property was not currently used for hospital purposes. Williamson, Oct. 20, 2000, A.G. Op. #2000-0615.

The statute sets forth the process for counties to follow in disposing of real property and contains identical language to that of the statute applicable to municipalities, except that the statute applicable to municipalities contains an additional provision requiring cities to either advertise for competitive bids on the purchase price or to sell the property after acquiring three appraisals. Wolfe, Feb. 2, 2001, A.G. Op. #2001-0018.

A county board of supervisors can lease vacant space in a county fire department building to a nonprofit food bank/thrift store after having first complied with the statutory mandate. Chamberlin, Feb. 21, 2002, A.G. Op. #02-0065.

Assuming that the dedication of property to the county has no reversionary clauses or other limiting language, the county may dispose of the property in the same manner as it would other county-owned property. Chamberlin, May 23, 2002, A.G. Op. #02-0215.

There is no authority for a county to lease surplus property to a nonprofit organization for nominal rent or no rent pursuant to Section 19-7-3. Jewell, May 9, 2003, A.G. Op. #03-0206.

A county may, pursuant to the authority provided in Section 57-7-1, renew the lease on property used as an industrial development project with the current tenant on such terms and conditions and with such safeguards as will best promote and protect the public interest; alternatively, if a board of supervisors makes the findings required by this section and same are reflected by an appropriate order entered upon the minutes, then the board may renew a lease with the current tenant without advertising for bids. Dulaney, July 7, 2003, A.G. Op. 03-0281.

Since Jasper General Hospital and Nursing Home is a political subdivision of Jasper County, Mississippi, the board of supervisors can effect a sale of surplus property titled in the trustees of the hospital. Houston, July 25, 2003, A.G. Op. 03-0367.

A county may sell surplus property pursuant to this section upon a proper finding spread across the minutes of the board of supervisors. Creekmore, Dec. 5, 2003, A.G. Op. 03-0634.

Provided the findings required by Chapter 922, Local and Private Laws of 1992, are reflected by an order entered upon the minutes, the Tallahatchie County Board of Supervisors may convey a building to not for profit corporation, for good and valuable consideration. Reynolds, Sept. 3, 2004, A.G. Op. 04-0448.

A determination of what suffices for “good and valuable consideration” is within the province of the board of supervisors. However, the consideration must be such that the lease does not constitute a donation to an ineligible entity pursuant to Miss. Const. Art. 4, § 95. Williams, Dec. 23, 2004, A.G. Op. 04-0491.

No authority can be found which would permit the governing authorities of a county to bind its successors to an extended lease pursuant to this section or § 29-1-15. Williams, Dec. 23, 2004, A.G. Op. 04-0491.

Under the provision of this section pertaining to the disposition of county-owned property which is no longer needed for county or related purposes, a board of supervisors may convey the property for good and valuable consideration without the necessity of advertising for bids, the determination of what suffices for good and valuable consideration is within the discretionary authority of the board. Norquist, May 13, 2005, A.G. Op. 05-0222.

If a board of supervisors makes a factual determination that a community hospital has ceased to use its building, and the board of trustees, if any, have dissolved and the board of supervisors is undertaking or has concluded the process of paying the debts of the hospital, then there would be no contemporaneously existent hospital and the board would not need to comply with Section 41-13-15 in the event of a sale. Logan, July 10, 2006, A.G. Op. 06-0262.

A county economic development district can separate non-industrial surplus land from an industrial park and dispose of it by selling it for fair market value. Moseley, Aug. 24, 2006, A.G. Op. 06-0360.

Pursuant to Sections 19-7-3 and/or 57-7-1, a county cooperative service district may sell a building to a county without necessity of advertising for bids. Sanders, Sept. 1, 2006, A.G. Op. 06-0349.

A county may lease the surplus portions of a county building to a private entity pursuant to the procedures set out in Section 19-7-3. Williams, Oct. 13, 2006, A.G. Op. 06-0485.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 485 et seq.

CJS. 20 C.J.S., Counties §§ 256-259.

§ 19-7-5. Disposal of personal property.

The board of supervisors shall have the power to sell and dispose of any personal property belonging to the county or any subdivision thereof according to the uniform personal property disposal requirements for local governments in Section 17-25-25.

Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

SOURCES: Codes, 1942, § 2925; Laws, 1932, ch. 189; Laws, 1936, ch. 286; Laws, 1942, ch. 193; Laws, 2000, ch. 593, § 1; Laws, 2003, ch. 483, § 3; Laws, 2012, ch. 499, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the first paragraph.

Cross References — Recovery of public property unlawfully disposed of, see § 7-7-211.

Authority of board of supervisors to contract for services of auctioneers, see § 19-3-69.

Application of this section to the disposal of library equipment and materials, see § 39-3-17.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2925] has no application to a sale of securities held by a county for investment purposes. Daniels v. Sones, 245 Miss. 461, 147 So. 2d 626 (1962).

ATTORNEY GENERAL OPINIONS

The board is authorized to advertise for bids for the purchase of trucks. Such bids may contain the provision to the effect that a trade in of an old truck, describing it, was desired. The highway department advertises for motor vehicles with or without trade ins and in this way it is free to accept any bid which it considers the lowest and best bid under the circumstances. The board could advertise in this manner as it is authorized to sell property that is no longer necessary for public use. Ops Atty Gen 1939-41, p 110.

Governing authority must comply with all laws concerning competitive bid process when disposing of personal property but bid may contain provisions for trade in of seized vehicles by police department. Dent, March 18, 1994, A.G. Op. #93-0787.

A county may enter into a contract with a computer company to develop a computer program and may sell its rights to such a program, but a county cannot develop a computer program solely for the purpose of sale for a profit; such a contract is permissible only as an incident to development of a product with a legitimate county or governmental purpose. Meadows, January 9, 1998, A.G. Op. #97-0787.

If a library board accepts a donation of fine art prints and decides to sell the prints, it must hold a public sale, either by auction or advertising and bidding, and in the latter case, the board may reject all bids if they are not acceptable. Austin, March 6, 1998, A.G. Op. #98-0116.

Section 65-7-99 allows a county to purchase and hold lands containing gravel or other road building materials to be used in the construction and maintenance or roads and to sell off any such road building material in excess of its own needs, with any funds arising from the sale of such material to be turned back into the fund from which the purchase price was made; in selling off any such excess road building materials the board of supervisors should follow the dictates of Section 19-7-5 which provided that the county may sell and dispose of personal property belonging to the county at public sale after first posting notices at three public places in the county, one of which must be at the courthouse. Munn, June 19, 1998, A.G. Op. #98-0312.

A county may utilize the use of an internet auction to sell surplus county property as long as it complies with Section 19-7-5. Webb, May 19, 2006, A.G. Op. 06-0198.

When an E-911 system is voted in, assuming the value of the existing 911 equipment is over $ 100, the county may sell and dispose of the equipment after advertising as stated in Section 19-7-5. Carroll, Sept. 8, 2006, A.G. Op. 06-0390.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 485 et seq.

§ 19-7-7. Insurance on county property.

The board of supervisors may have the courthouse, jail and other buildings of the county, the furniture thereof, the books of the county, and the personal property of the county, insured against loss by fire, cyclone and tornado, and other hazards. The board of supervisors may carry steam boiler, plate glass and other miscellaneous casualty insurance against loss of county property, as in the discretion of the board of supervisors may seem proper. The cost thereof shall be paid out of the county treasury.

The boards of supervisors of two (2) or more counties may pool their risks under this section and may provide for the purchase of one or more policies of property insurance, or the establishment of a self-insurance fund or self-insurance reserves, or any combination thereof. The cost of participation shall be paid out of the general fund of the county. The administration and service of any such self-insurance program shall be contracted to a third party and approved by the Commissioner of Insurance.

SOURCES: Codes, 1892, § 300; Laws, 1906, § 319; Hemingway's 1917, § 3692; 1930, § 233; 1942, § 2909; Laws, 1924, ch. 235; Laws, 1930, ch. 9; Laws, 1942, ch. 208; Laws, 1988, ch. 476, eff from and after passage (approved April 26, 1988).

Cross References — Authority of municipalities to insure municipal property, see § 21-37-45.

Insurance of school buildings and other school property, see § 37-7-303.

JUDICIAL DECISIONS

1. In general.

The proceeds of a fire insurance policy on property of the county takes the place of the property, is a trust fund and does not become a part of the general fund. Adams v. Helms, 95 Miss. 211, 48 So. 290 (1909).

ATTORNEY GENERAL OPINIONS

The board of supervisors are not authorized to carry liability insurance on county automobiles and on its road implements and machinery. The county is not liable for personal injuries and, therefore, would not be authorized to carry insurance for such injuries. Ops Atty Gen 1939-41, p 44.

Insurance coverage may be desirable, but it is not mandatory for county-owned equipment and vehicles; thus, decision whether or not to acquire casualty and/or liability insurance for county-owned fire-fighting vehicles is entirely within discretion of county board of supervisors. Beech, April 10, 1991, A.G. Op. #91-0287.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 485.

§ 19-7-8. Repealed.

Repealed by Laws of 1992, ch. 491 § 11, eff from and after October 1, 1993.

[Laws, 1973, ch. 430, § 1; repealed, Laws, 1984, ch. 495, § 36, and Laws, 1984, 1st Ex Sess, ch. 8, § 3; reenacted and amended, Laws, 1985, ch. 474, § 40; Laws, 1986, ch. 438, § 8; Laws, 1987, ch. 483, § 14; Laws, 1988, ch. 442, § 11; Laws, 1989, ch. 537, § 10; Laws, 1990, ch. 468, § 1; Laws, 1990, ch. 518, § 11; Laws, 1991, ch. 618, § 1]

Editor's Note — Former § 19-7-8 related to purchase of liability insurance, and payment from general fund of claims for amounts below deductible amount for liability insurance in effect.

§ 19-7-9. Tagging of motor vehicles.

The board of supervisors shall place license tags or identification tags on all county automobiles, trucks and tractors.

SOURCES: Codes, 1930, § 5586; 1942, § 8064; Laws, 1926, ch. 205.

Cross References — Payment of privilege taxes on county motor vehicles, see §§ 27-19-25, 27-19-27.

Provision that name of agency must be painted on certain public vehicles before a tag will be issued, see § 27-19-59.

ATTORNEY GENERAL OPINIONS

Insurance coverage may be desirable, but it is not mandatory for county-owned equipment and vehicles; thus, decision whether or not to acquire casualty and/or liability insurance for county-owned fire-fighting vehicles is entirely within discretion of county board of supervisors. Beech, April 10, 1991, A.G. Op. #91-0287.

§ 19-7-11. Erection or renovation of courthouse or jail.

If a new courthouse or jail shall be required in any county, or if the courthouse or jail shall need remodeling, enlarging, or repairing, the board of supervisors shall determine the material, the dimensions, and the plan thereof, and may make the necessary contracts for the erection, remodeling, enlarging, or repairing thereof, and for furnishing the materials. The board may appoint one or more commissioners to superintend the work as it progresses, which commissioner or commissioners shall take care that the proper materials are furnished, and that the work is faithfully performed according to contract, and who, for his or their services, shall receive a reasonable compensation.

The board of supervisors of any county having two judicial districts, and in which State Highways 18 and 15 intersect, is further authorized to issue negotiable bonds of either of the judicial districts of such county for the purpose of erecting, equipping, repairing, reconstructing, remodeling, and enlarging the courthouse in and for the judicial district for which such bonds are issued. All such bonds shall be issued in like manner and subject to the same limitations and provisions as are set forth by law with reference to the issuance of county-wide bonds.

SOURCES: Codes, 1857, ch. 59, art 21; 1871, § 1368; 1880, § 2149; 1892, § 294; 1906, § 313; Hemingway's 1917, § 3686; 1930, § 218; 1942, § 2894; Laws, 1971, ch. 321, § 1, eff and after passage (approved February 19, 1971).

Cross References — Requirement that boards of supervisors erect and maintain courthouse and jail, see § 19-3-41.

Authority to issue bonds for erecting, remodeling, etc. county courthouses, jails, and other county buildings, see § 19-9-1.

Authority to levy special tax for erection, repairing, etc. of courthouse, jail or other county buildings, see § 19-9-93.

JUDICIAL DECISIONS

1. In general.

A county board of supervisors has a duty under §§ 19-3-41 and 43 to provide adequate court facilities for each county. Encompassed therein is the duty to provide a courtroom free of such noise as substantially interrupts court proceedings. If the legislative branch fails to furnish the absolute essentials required for the operation of an independent and effective court, then no court affected thereby should fail to act. County boards of supervisors are subject to appropriate court orders requiring them to furnish adequate courtroom facilities when they adamantly fail or refuse to do so. Hosford v. State, 525 So. 2d 789 (Miss. 1988).

This section gives the board of supervisors incidentally the power to fix the cost of a new courthouse and the board's action is not subject to review by the courts. Wells v. McNeill, 93 Miss. 407, 48 So. 184 (1909).

The board cannot contract for the building of a courthouse except in the mode provided, and when such contract has been made it can be altered or modified only in the same manner. Board of Supvrs. v. Patrick, 54 Miss. 240 (1876).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-7-11 gives board of supervisors, but not sheriff, authority to contract with phone company for provision of pay telephone service to prisoners; phones would remain property of phone company, and therefore contract would not be one for construction or for purchase of commodities or equipment; thus, contract for phone service would not need to be awarded through public bidding process. Jackson, Feb. 25, 1993, A.G. Op. #93-0090.

A board of supervisors may grant an exclusive franchise and license for placement of pay telephones in the county courthouse. McWilliams, October 30, 1998, A.G. Op. #98-0657.

A county board of supervisors can contract to pay a construction management firm a fixed fee to assist the county in locating grants that can provide funding for construction of a new jail which is based on a percentage of the total construction price of the facility as long as it is determined by the board to be reasonable compensation for the management services performed. Trapp, Jan. 1, 2004, A.G. Op. 03-0662.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 478.

§ 19-7-13. Employment of janitor and assistants.

The board of supervisors, in its discretion, may employ a janitor and necessary assistants for the courthouse and county buildings, their salaries to be fixed by the board and to be paid out of any funds in the county treasury not otherwise appropriated.

SOURCES: Codes, Hemingway's 1917, § 3780; 1930, § 230; 1942, § 2906; Laws, 1908, ch. 142; Laws, 1940, ch. 261; Laws, 1964, ch. 283, eff from and after passage (approved April 16, 1964).

Cross References — Employment of caretaker for county land, see §§ 19-7-15 et seq.

§ 19-7-15. Employment of caretaker of county lands.

The boards of supervisors of the various counties of this state may, in their discretion, employ a competent person to look after the interest of the county in any lands that may be owned by such county other than sixteenth section or lieu lands, or lands acquired under foreclosure proceedings under deeds in trust securing loans of sixteenth section school funds, and to pay such person a salary of not exceeding Eighteen Hundred Dollars ($1800.00) annually for such services. Such salary will be paid out of the revenue derived from such lands, and at the end of the year during which such services are rendered. The boards of supervisors may, in their discretion, employ the county superintendent of education to perform the duties and services provided for herein, and pay such county superintendent the salary provided for herein in addition to the salary as superintendent of education.

Moreover, the boards of supervisors of said counties in this state are hereby authorized in their discretion to pay to the secretary of the superintendents of education in said counties in this state, an additional sum of Six Hundred Dollars ($600.00) per annum out of the revenues derived from such lands in said counties, at the end of the year during which such services are rendered. Said sum of Six Hundred Dollars ($600.00) per annum shall be in addition to the salaries now authorized by law to be paid to said secretaries of the county superintendents of education in this state.

SOURCES: Codes, 1930, § 307; 1942, § 3015; Laws, 1928, ch. 59; Laws, 1950, ch. 290; Laws, 1952, ch. 211.

Cross References — Employment of janitors for county buildings, see § 19-7-13.

§ 19-7-17. Employment of caretaker of county lands; duties of caretaker.

It shall be the duty of such person when employed to look after and collect the rents on such land, to see that the improvements on the same are kept in good condition, and to prevent waste and depredation to such property.

SOURCES: Codes, 1930, § 308; 1942, § 3016; Laws, 1928, ch 59.

§ 19-7-19. Employment of caretaker of county lands; minutes of board to be sole authority.

The boards of supervisors shall not enter into a contract, as provided for in Section 19-7-15, except by placing the same on their minutes, and in the event any such contract be made without complying with this section, the party attempted to be employed shall not receive any compensation whatever for any services that he may have performed thereunder.

SOURCES: Codes, 1930, § 309; 1942, § 3017; Laws, 1928, ch. 59.

§ 19-7-21. Counties conveying land for state park may lease retained mineral interests.

Any county which has acquired and conveyed or may hereafter acquire and convey any land for state park purposes and has retained or does retain the mineral rights thereunder may lease the same for oil, gas and other minerals either jointly or severally.

Such lease or leases may be made only after legal advertisement for bids therefor have been published once a week for three consecutive weeks in some newspaper having a general circulation in the county. It shall be necessary to describe the property in the advertisement by its popular name and by giving a definite legal description by metes and bounds. Said lease, with the legal description of the property set out therein, shall be executed to the highest and best bidder therefore on all the tract involved and shall contain a provision therein that no part of the property involved in said lease shall be dropped during the lifetime of said lease, which shall not be for a longer period than ten years, unless production in commercial quantities results, and that if the delay rentals are not paid on all the property then said lease in its entirety shall become null and void. No lease shall become effective after its acceptance by the board of supervisors until the same shall have the written approval of the state mineral lease commission and the Mississippi Board of Park Examiners affixed thereto.

From the proceeds arising from the execution of the original lease there shall be paid all cost of advertising herein required and other expenses necessary and incident to the execution thereof, and any balance then remaining on hand and accruing thereafter as a result of the rents, profits and income accruing from the lease shall be used, first, to build necessary bridges in the particular park property affected and, second, any balance then remaining on hand shall be used to call or pay any county-wide bonds now or hereafter outstanding and, third, if there be no outstanding county-wide bonds, then such balance shall be paid into the general funds of the county.

Whenever production in commercial quantities is made on any property involved in such lease, the lessee shall not be required to pay delay rentals thereafter so long as such production continues.

The proceeds to be paid to the county from the production of the oil, gas or other minerals shall be subject to all severance taxes imposed by law, just the same as if the county was an individual or corporation.

The lessee shall be liable for all damages to property incurred by any operation in carrying out the terms of said lease.

Nothing in this section shall in any way be construed to limit, abrogate, or otherwise restrict any right, title, or interest in the State of Mississippi.

SOURCES: Codes, 1942, § 2892-02; Laws, 1946, ch. 242, §§ 1-7.

Editor's Note — Section 29-7-1 provides that the words "mineral lease commission," wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources. Section 49-2-6, however, provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Severance tax on oil, see §§ 27-25-501 et seq.

Severance tax on natural gas, see §§ 27-25-701 et seq.

Lease of state lands for minerals, see § 49-1-37.

Reservation of mineral rights in lands donated to the state for reforestation and park purposes, see § 55-3-1.

Reconveyance of unused lands donated to state, see § 55-3-3.

Mississippi Department of Wildlife, Fisheries and Parks, see §§ 55-3-31 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 493 et seq.

9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:11 et seq. (gas, oil, and other mineral leases).

§ 19-7-23. Furnishing of courthouse.

The board of supervisors shall provide for properly furnishing the courthouse and for supplying all county offices with necessary record books, stationery, seals, presses, iron safes, tables, chairs, furniture, and all other necessary articles, and the board shall provide the chancery clerk's office with a copy of the field notes of the United States survey, transcripts of records of other counties which relate to or affect titles of property in its county, the original entries of land and the necessary township maps, and provide for the safe and orderly keeping of all the records thereof, and shall make all needful allowances, payable out of the county treasury, therefor. On the order of the circuit court, or the chancery court, the board shall allow all sums expended for supplying the offices and courtrooms with all such necessary articles, but an allowance shall not be made for printing in record books of conveyances.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 4 (42); 1857, ch. 59, art 18; 1871, § 1365; 1880, § 2146; 1892, § 296; 1906, § 315; Hemingway's 1917, § 3688; 1930, § 222; 1942, § 2897.

Cross References — Definition of "stationery" see § 1-3-51.

Court reporter's stationery, see § 9-13-23.

Provision that sheriff shall be the custodian of maps, plats, and certain books, see § 19-25-65.

Sheriff's responsibility for courthouse, see § 19-25-69.

Requirement that certain county officers keep their offices at courthouse, see § 25-1-99.

Penalty for destroying or defacing courthouse furniture, etc., see § 97-17-39.

JUDICIAL DECISIONS

1. In general.

The chancery clerk of a county is entitled to be furnished with postage necessary in the business of his office. Downing v. Hinds County, 84 Miss. 29, 36 So. 73 (1904).

It is the province and duty of the board of supervisors, under this section [Code 1942, § 2897], to properly furnish the courthouse and supply all county officers with the necessary record books, stationery, furniture, etc. Board of Supvrs. v. Hughes, 83 Miss. 195, 35 So. 424 (1903).

The circuit and chancery courts are respectively empowered to procure, in case the board of supervisors has failed to do so, the necessary record books, stationery, furniture, etc., belonging peculiarly to the court exercising the power, but have no authority to procure other such articles for the county. Board of Supvrs. v. Hughes, 83 Miss. 195, 35 So. 424 (1903).

Under Code 1906, § 1002, the clerk should first ask the court to make an allowance for the purchase of the necessary articles, and if the court approve the application, in whole or in part, it should direct the clerk what to purchase, limiting the sum to be expended. Board of Supvrs. v. Hughes, 83 Miss. 195, 35 So. 424 (1903).

ATTORNEY GENERAL OPINIONS

The county school fund, even though there is a surplus, cannot be used for the purpose of buying furniture and equipment for the office of the county superintendent of education.

This section [Code 1942, § 2897] authorized the board of supervisors to properly furnish and equip the various county offices with office furniture, equipment, etc. Ops Atty Gen 1935-37 p 143.

Section 19-7-23 applies to the office of county attorney regardless of whether the county attorney's office is physically located in a county building or courthouse. Vaughn, September 13, 1996, A.G. Op. #96-0605.

All requests made by the chancery or circuit courts for equipment or supplies must be presented first to the board of supervisors; only if and when the board of supervisors fails to procure necessary items may the court order the court clerk to procure those items, and such court order has the legal effect of binding the board to follow that order. Bryant, Aug. 1, 1997, A.G. Op. #97-0405.

Within reason, the county board of supervisors must provide the necessities for the tax assessor's office to do business, including postage, stationery, and all necessary articles. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

The board of supervisors may budget for costs and expenditures related to the office of the county prosecuting attorney, however, the determination of what articles, equipment and materials are reasonable and necessary and to be included in the budget is a matter left to the sound discretion of the board. Cobb, Oct. 7, 2005, A.G. Op. 05-0463.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 483.

§ 19-7-25. Providing books and bookcase for courtroom.

The board of supervisors of each county shall provide and have placed in the courtroom of the courthouse a suitable bookcase, with doors and lock, of sufficient capacity to hold not less than two hundred law books, in which the Mississippi reports, digests thereof, statutes of the state, and other books belonging or furnished to the county, shall be kept, The board of supervisors shall purchase any volume of said reports, digests and statutes which may be lost or destroyed, and shall have bound all of such books as need to be rebound for preservation, all of which shall be paid for out of the county treasury. Additional bookcases shall be furnished when necessary.

SOURCES: Codes, 1892, § 298; 1906, § 317; Hemingway's 1917, § 3690; 1930, § 223; 1942, § 2898.

Cross References — Books, documents etc., distributed by the Secretary of State to county libraries, see §§ 7-3-11 et seq.

Provisions for law libraries, see § 19-7-31.

Sheriff being county librarian and custodian of Mississippi Reports and other books, see § 19-25-65.

§ 19-7-27. Providing bulletin boards for legal notices.

The board of supervisors shall provide suitable bulletin boards, to be placed conspicuously at or near the main entrance to the courthouse, upon which all notices required to be there posted may be placed.

SOURCES: Codes, 1892, § 297; 1906, § 316; Hemingway's 1917, § 3689; 1930, § 225; 1942, § 2901.

§ 19-7-29. Maintenance of courthouse yard.

The board of supervisors of each county may in their discretion maintain a good and sufficient fence around the courthouse yard, and, when necessary, a substantial pavement on the walks of the same, and may have shade trees planted therein, and shall provide for the absolute exclusion of all livestock therefrom. No tent or booth may be erected on the courthouse yard to be used for the advertising or the vending of any goods, wares, notions or nostrums, or for doing the business of a photographer, unless written authorization therefor is obtained from the board of supervisors. The board of supervisors may pave and improve the streets around the courthouse yard.

SOURCES: Codes, 1892, § 295; Laws, 1906, § 314; Hemingway's 1917, § 3687; 1930, § 221; 1942, § 2896; Laws, 1940, ch. 256; Laws, 1989, ch. 363, § 1, eff from and after passage (approved March 12, 1989).

JUDICIAL DECISIONS

1. In general.

The power conferred under this section [Code 1942, § 2896] means only that the board of supervisors is authorized to make somewhat of a park of the lands immediately adjacent to the courthouse building, and it was not intended thereby to empower the board of supervisors to surrender by lease any part of the lot set aside or used for the purpose of parking. AMOCO v. Marion County, 187 Miss. 148, 192 So. 296 (1939).

ATTORNEY GENERAL OPINIONS

County board of supervisors can contract with private individuals or corporations to operate vending machines at courthouse for benefit of public; although sheriff is required to be custodian of courthouse, he may not be required to assume responsibility for maintenance of vending machine funds and/or equipment. Herring, June 21, 1990, A.G. Op. #90-0406.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 483.

§ 19-7-31. Law libraries.

The board of supervisors of each county in the state shall have power, by an appropriate order or orders on its minutes, to establish and maintain in the county courthouse or other suitable public building adjacent or near thereto, a public county law library under such rules, regulations and supervision as it may from time to time ordain and establish, and to that end, the board may accept gifts, grants, donations or bequests of money, furniture, fixtures, books, documents, maps, plats or other property suitable for that purpose.

The board of supervisors shall have power to exchange or sell duplicate volumes or sets of any such books or furniture, and in case of sale, to invest the proceeds in other suitable books or furniture. The board may also purchase or lease from time to time additional books, furniture, or equipment for the public law library.

For the purpose of providing suitable quarters for the public law library, the board of supervisors may, in its discretion, expend such sums as may be deemed necessary or proper for that purpose, and may also employ a suitable person as librarian and pay the law librarian such salary as the board, in its discretion, may determine. The board may employ additional librarians or other employees on either a part-time or full-time basis and may pay these additional employees as the board, in its discretion, may determine. The board of supervisors, in their discretion, may contract with the county or municipal library for any staff or facilities as they deem necessary for the overall management and operation of the county law library. The board of supervisors may contract with the State Law Library for law library services that may be offered by the State Law Library.

In case the public law library is so established, all books, documents, furniture and other property then belonging to the county library, as provided for in Section 19-7-25, shall be transferred to and become part of the public law library, and all books, documents and publications donated by the state to the county library shall also become a part of the public law library. In that case, Sections 19-7-25 and 19-25-65, relating to the county library, shall be superseded in that county for as long as the public law library is maintained in the county.

The board of supervisors of any such county, in its discretion, may levy, by way of resolution, additional court costs not exceeding Two Dollars and Fifty Cents ($2.50) per case for each case, both civil and criminal, filed in the chancery, circuit and county courts or any of these in the county, and may levy, by way of resolution, additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each case, both civil and criminal, filed in the justice courts of the county, for the support of the library authorized in the county. If the additional court costs authorized in this section are levied, the clerk or judge of those courts shall collect those costs for all cases filed in his court and forward same to the chancery clerk, who shall deposit the same in a special account in a county depository for support and maintenance of the library, and the chancery clerk shall be accountable for those funds. However, no such levy shall be made against any cause of action the purpose of which is to commit any person with mental illness, alcoholic or narcotic addict to any institution for custodial or medical care, and no such tax shall be collected under this subsection on any cause of action that the proper clerk handling same deems to be in its very nature charitable and in which cause the clerk has not collected his own legal fees.

To accomplish the purposes of this section, the board of supervisors may enter into such arrangement or arrangements with the county bar association of any such county as may seem advisable for the care and operation of the law library, and the board may receive and consider, from time to time, such recommendations as the bar association may deem appropriate regarding the library.

The board of supervisors of each county in which there are two (2) judicial districts, in its discretion, may maintain a law library in each judicial district. In those counties the board, in its discretion, may pay from the county general fund or from the special fund authorized in this section all the costs authorized in this section, provided that the board shall not spend in each judicial district less than the amount of the special court costs authorized in this section and collected in each such district.

The governing authorities of any municipality, in their discretion, by resolution duly adopted and entered on their official minutes, may levy additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each conviction in the municipal court of the municipality, for the support and maintenance of the county law library in the county within which the municipality is located. The additional costs shall be collected by the clerk of the court, forwarded to the chancery clerk of the county for deposit in a special account in the county depository, and expended for support and maintenance of the county law library in the same manner and in accordance with the same procedure as provided for costs similarly collected in the chancery, circuit, county and justice courts of the county.

SOURCES: Codes, 1942, §§ 2898-01 to 2898-05, 2899; Laws, 1934 ch. 239; Laws, 1948, ch. 268; Laws, 1962, ch. 242; Laws, 1966 ch. 292, § 1; Laws, 1968, ch. 320, §§ 1-5; Laws, 1972, ch. 330, §§ 1, 2; Laws, 1973, ch. 316, § 1; Laws, 1974, ch. 424; Laws, 1975, ch. 379; Laws, 1976, ch. 460; Laws, 1977, ch. 408, § 1; Laws, 1985, ch. 514, § 2; Laws, 1992, ch. 312, § 1; Laws, 2003, ch. 377, § 1; Laws, 2008, ch. 442, § 9, eff from and after July 1, 2008.

ATTORNEY GENERAL OPINIONS

Under Section 19-7-31, fees may not be used to pay for a Judge's use of an on-line computer reference service when such usage is not made available to the members of the bar and the public on the same basis. James, June 22, 1995, A.G. Op. #95-0347.

Law library funds may be used to purchase video equipment, as long as such equipment will be available to members of the bar and to the general public. Dunn, April 17, 1998, A.G. Op. #98-0171.

RESEARCH REFERENCES

ALR. Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 A.L.R.4th 590.

§ 19-7-32. Repealed.

Repealed by Laws of 1977, ch. 408, § 2, eff from and after passage (approved March 29, 1977).

[En 1974, ch. 320, §§ 1, 2]

Editor's Note — Former § 19-7-32 provided for law libraries in additional counties, and or the imposition and collection of fees. For current provisions on county law libraries, see § 19-7-31.

§ 19-7-33. Regulation of parking on courthouse and other county lands.

The board of supervisors of any county is hereby authorized and empowered to regulate the parking of motor vehicles on county public lands on which the courthouse and other county buildings are located, or any other lands under the control and jurisdiction of the county.

SOURCES: Codes, 1942, § 2896.5; Laws, 1968, ch. 287, § 1, eff from and after passage (approved May 15, 1968).

§ 19-7-35. Procurement of artesian well on county property.

The board of supervisors may procure an artesian well on the property used for the courthouse, jail, county farm, or poorhouse, and owned by the county, by contract with some person or corporation to complete said well on said property, or by hiring laborers, manager, and machinery to sink the well under supervision of the board or some one appointed by it to superintend the work. The cost of said well shall be paid out of the county treasury, on the allowance of the board, as other accounts against the county are paid. The board of supervisors shall make the best contracts it can in the interest of the county in procuring said well, without advertising for the bidders as required by law in letting other contracts, but having the clerk of the board write a number of persons or corporations engaged in such work, inviting them to come before the board to submit propositions. If no proposition submitted is satisfactory, the board shall not accept any proposition at that meeting, but shall extend invitations as before for another meeting, and so continue until the board gets a proposition submitted that is satisfactory.

SOURCES: Codes, 1906, § 398; Hemingway's 1917, § 3775; 1930, § 229; 1942, § 2905; Laws, 1906, ch. 108; Laws, 1908, ch. 152.

§ 19-7-37. Use of part of oil severance tax funds for building and permanent improvements.

The board of supervisors of any county receiving a part of the oil severance tax under the provisions of Sections 27-25-501 et seq., is hereby authorized to allocate a part of the money so received to a fund or funds for building and permanent improvements for the county or for any school district or for any road district, and the money so allocated to any such fund or funds may be expended for any purpose as now authorized by law. The authority to allocate a part of the oil severance tax to a fund, or funds, for buildings and other permanent improvements shall be in addition to the authority of the board of supervisors granted by Section 27-25-3.

SOURCES: Codes, 1942, § 2958.5; Laws, 1946, ch. 454.

Cross References — Distribution of oil severance tax, see § 27-25-505.

§ 19-7-39. Maintenance and repair of public or private nonprofit cemeteries in certain counties.

The board of supervisors of any county bordering on the Gulf of Mexico having two judicial districts and where U. S. Highways 90 and 49 intersect is authorized to maintain and repair any public or private nonprofit cemetery located within the county but located outside the corporate boundary of any municipality in the county. The expense of such maintenance may be paid from any available county funds.

The board of supervisors of any county is authorized to accept, in the name of the county, title by deed to any cemetery located within the county but located outside the corporate boundary of any municipality in the county which, due to age, abandonment of graves by private owners or for other good cause, is not being properly maintained or repaired and thereby have become detrimental to the public health and welfare. No acceptance of title by deed shall be valid unless a motion thereof shall be made at a regular or special meeting of the board, adopted by a majority of the board's membership, and entered upon the minutes. No county funds or other public funds shall be expended by the board for the purpose of purchasing such cemetery. The board shall have the power to maintain, repair, enlarge, fence or otherwise improve any cemetery, title to which has been accepted by the board.

SOURCES: Laws, 1975, ch. 395, eff from and after passage (approved March 24, 1975).

§ 19-7-41. Authority of county boards of supervisors to exercise power of eminent domain for construction of penitentiaries.

The board of supervisors of any county is authorized to exercise the power of eminent domain for the acquisition of land whenever public necessity and convenience so requires for the construction of a penitentiary in the county. In the exercise of such power pursuant to this section with respect to the construction of a federal correctional facility or other federal penal institution, the board of supervisors of any county having a land area of more than nine hundred (900) square miles and a population of more than twenty-five thousand (25,000) but less than twenty-five thousand six hundred (25,600) according to the 1990 federal census may exercise the right of immediate possession to real property, including oil, gas and other mineral interests, as provided in Section 11-27-81 et seq.

SOURCES: Laws, 1991, ch. 619, § 1; Laws, 1992, ch. 350 § 1; Laws, 1994, ch. 310, § 1, eff from and after July 1, 1994.

Cross References — Right of immediate possession may be exercised by any county authorized to exercise power of eminent domain under this section, see §§ 11-27-81, 11-27-85.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 59.

CJS. 29A C.J.S., Eminent Domain § 57.

CHAPTER 9

Finance and Taxation

Uniform System for Issuance of County Bonds	19-9-1
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UNIFORM SYSTEM FOR ISSUANCE OF COUNTY BONDS

Sec.	
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19-9-27.	Borrowing in anticipation of taxes.
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§ 19-9-1. Purpose of bonds enumerated.

The board of supervisors of any county is authorized to issue negotiable bonds of the county to raise money for the following purposes:

(a) Purchasing or erecting, equipping, repairing, reconstructing, remodeling and enlarging county buildings, courthouses, office buildings, jails, hospitals, nurses' homes, health centers, clinics, and related facilities, and the purchase of land therefor;

(b) Erecting, equipping, repairing, reconstructing, remodeling, or acquiring county homes for indigents, and purchasing land therefor;

(c) Purchasing or constructing, repairing, improving and equipping buildings for public libraries and for purchasing land, equipment and books therefor, whether the title to same be vested in the county issuing such bonds or in some subdivision of the state government other than the county, or jointly in such county and other such subdivision;

(d) Establishing county farms for convicts, purchasing land therefor, and erecting, remodeling, and equipping necessary buildings therefor;

(e) Constructing, reconstructing, and repairing roads, highways and bridges, and acquiring the necessary land, including land for road building materials, acquiring rights-of-way therefor; and the purchase of heavy construction equipment and accessories thereto reasonably required to construct, repair and renovate roads, highways and bridges and approaches thereto within the county;

(f) Erecting, repairing, equipping, remodeling or enlarging or assisting or cooperating with another county or other counties in erecting, repairing, equipping, remodeling, or enlarging buildings, and related facilities for an agricultural high school, or agricultural high school-junior college, including gymnasiums, auditoriums, lunchrooms, vocational training buildings, libraries, teachers' homes, school barns, garages for transportation vehicles, and purchasing land therefor;

(g) Purchasing or renting voting machines and any other election equipment to be used in elections held within the county;

(h) Constructing, reconstructing or repairing boat landing ramps and wharves fronting on the Mississippi Sound or the Gulf of Mexico and on the banks or shores of the inland waters, levees, bays and bayous of any county bordering on the Gulf of Mexico or fronting on the Mississippi Sound, having two (2) municipalities located therein, each with a population in excess of twenty thousand (20,000) in accordance with the then last preceding federal census;

(i) Assisting the Board of Trustees of State Institutions of Higher Learning, the Office of General Services or any other state agency in acquiring a site for constructing suitable buildings and runways and equipping an airport for any state university or other state-supported four-year college now or hereafter in existence in such county;

(j) Aiding and cooperating in the planning, undertaking, construction or operation of airports and air navigation facilities, including lending or donating money, pursuant to the provisions of the airport authorities law, being Sections 61-3-1 through 61-3-83, Mississippi Code of 1972, regardless of whether such airports or air navigation facilities are located in the county or counties issuing such bonds;

(k) Establishing rubbish and garbage disposal systems in accordance with the provisions of Sections 19-5-17 through 19-5-27;

(*l*) Defraying the expenses of projects of the county cooperative service district in which it is a participating county, regardless of whether the project is located in the county issuing such bonds;

(m) Purchasing machinery and equipment which have an expected useful life in excess of ten (10) years. The life of such bonds shall not exceed the expected useful life of such machinery and equipment. Machinery and equipment shall not include any motor vehicle weighing less than twelve thousand (12,000) pounds;

(n) Purchasing fire fighting equipment and apparatus, and providing housing for the same and purchasing land necessary therefor;

(o) A project for which a certificate of public convenience and necessity has been obtained by the county pursuant to the Regional Economic Development Act;

(p) Constructing dams or low-water control structures on lakes or bodies of water under the provisions of Section 19-5-92;

(q) For the purposes provided for in Section 57-75-37.

SOURCES: Codes, 1892, § 311; 1906, § 331; Hemingway's 1917, § 3704; 1930, § 247; 1942, § 2926-01; Laws, 1904, ch. 140; Laws, 1912, ch. 234; Laws, 1932, ch. 204; Laws, 1950, ch. 241, § 1; Laws, 1954, ch. 360, § 27; Laws, 1956, ch. 198; Laws, 1957 Ex Sess Ch. 13, § 5; Laws, 1966, ch. 293, § 1; Laws, 1968, ch. 284; Laws, 1973, ch. 446, § 1; Laws, 1982, ch. 441; Laws, 1989, ch. 519, § 9; Laws, 1990, ch. 542, § 1; Laws, 2000, 2nd Ex Sess, ch. 1, § 46; Laws, 2001, ch. 476, § 3; Laws, 2005, ch. 315, § 10, eff from and after passage (approved Mar. 14, 2005.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (j). The words "Sections 61-3-1 through Section 61-3-83" were changed to "Sections 61-3-1 through 61-3-83." The Joint Committee ratified the correction at its April 26, 2001 meeting.

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws, 2001, ch. 476, § 6, provides:

"SECTION 6. Nothing in this act shall be construed to require the prior approval of a levee board for the repair or construction of flood control structures in areas that are not located in a levee district area."

Cross References — Bond issue for joint construction of jails by certain counties and municipalities, see § 17-5-1.

Authorization for issuance of bonds for solid or hazardous waste disposal projects, see § 17-17-105.

Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

County and municipal appropriations to planning and development districts, see § 17-19-1.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

County Cooperative Service Districts, see §§ 19-3-101 through 19-3-115.

Issuance of bonds by county or regional railroad authority, see § 19-29-29.

Issuance of municipal bonds, see §§ 21-33-301 et seq.

Issuance of duplicates to replace lost or mutilated county warrants, see § 25-55-19.

Applicability of this and following sections to bonds issued for construction of access road or roads to and from sulphur extraction plants in certain counties, see § 27-25-705.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Determining validity of bond issues, see § 31-13-5.

Limitation on amount of bond issue, see § 31-15-5.

Method of payment of principal and interest at bank or trust company, see § 31-19-9.

Advertising sale of bonds, see § 31-19-25.

Additional powers granted in connection with issuance of bonds, see § 31-21-5.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Authority to borrow money for the purchase of school transportation equipment, etc., see §§ 37-41-89 et seq.

School bonds generally, see §§ 37-59-1 et seq.

Issuance and sale of bonds; election; terms; tax levy, see § 37-113-45.

Issuance and sale of bonds; election; terms; tax levy, see § 37-115-71.

Authority of municipalities to issue bonds for community hospitals, health centers, etc., see § 41-13-19.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

Issuance of bonds by the Wavelands Regional Wastewater Management District, see § 49-17-185.

Issuance of bonds by the Mississippi Gulf Coast Regional Wastewater Authority, see § 49-17-325.

Regional Economic Development Act, see §§ 57-64-1 et seq.

Municipalities authorized to issue general obligation bonds for airport facilities, see §§ 61-3-3, 61-3-65.

Authority to contribute county funds to airport facilities acquired for the use of universities or colleges, see §§ 61-5-71, 61-5-73.

Authority of counties to contribute funds to aid in construction of state highways, see § 65-1-81.

Payment of road bond issues, see §§ 65-15-9 et seq.

Authority of certain counties to issue bonds for erection of sea walls, see §§ 65-33-1 et seq.

Authority to issue refunding bonds to pay for sea walls, see §§ 65-33-61 et seq.

Forgery or counterfeiting of public securities, see § 97-21-9.

ATTORNEY GENERAL OPINIONS

County may borrow money for purpose of paying balance due on lease-purchase contract for road equipment. Logan, July 15, 1992, A.G. Op. #92-0459.

County may not use bonds to lease or lease-purchase equipment weighing over 12,000 pounds. Chandler, July 16, 1992, A.G. Op. #92-0506.

Pursuant to Sections 19-9-1, 43-1-9, 43-1-11, a county is authorized to borrow money in an amount not exceeding the limit imposed by Section 17-21-51 for the purpose of erecting a county building to house the local county Department of Human Services. Trapp, February 15, 1995, A.G. Op. #95-0022.

Expansion of joint city-county library system is a proper purpose for county bonding. Haas, March 6, 1998, A.G. Op. #98-0090.

Subsection (f) of this section does not permit the board of supervisors to issue negotiable bonds to raise money for the acquisition of property for use by a community college. Norquist, July 7, 2003, A.G. Op. 03-0304.

RESEARCH REFERENCES

ALR. Power of governmental unit to issue bonds as implying power to refund them. 1 A.L.R.2d 134.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 95 et seq.

15 Am. Jur. Legal Forms 2d, Public Securities and Obligations § 214:14 (resolution determining that public interest and necessity require issuance of public securities).

CJS. 20 C.J.S., Counties §§ 411-429.

§ 19-9-3. Bonds of roads or supervisors districts.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors of any county is authorized to issue negotiable bonds of any road district or supervisors district within any such county to raise money for the purpose of constructing, reconstructing, and repairing roads, highways and bridges, and acquiring the necessary land, including land for building materials, and rights-of-way therefor.

The board of supervisors of any county designated in paragraph (h) of Section 19-9-1 is authorized to issue negotiable bonds of any supervisors district or districts in such county to raise money for the purposes described in paragraph (h) of Section 19-9-1.

All bonds issued pursuant to this section shall be issued in like manner and be subject to the same limitations and provisions as are set forth in Sections 19-9-1 through 19-9-31 with reference to the issuance of county bonds.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors of any county designated in paragraph (h) of Section 19-9-1 is authorized to issue negotiable bonds of any supervisors district or districts in such county to raise money for the purposes described in paragraph (h) of Section 19-9-1.

All bonds issued pursuant to this section shall be issued in like manner and be subject to the same limitations and provisions as are set forth in Sections 19-9-1 through 19-9-31 with reference to the issuance of county bonds.

SOURCES: Codes, 1892, § 311; 1906, § 331; Hemingway's 1917, § 3704; 1930, § 247; 1942, §§ 2926-01, 2926-02; Laws, 1904, ch. 140; Laws, 1912, ch. 234; Laws, 1932, ch. 204; Laws, 1950, ch. 241, §§ 1, 2; Laws, 1954, ch. 360, § 27; Laws, 1956, ch. 198; Laws, 1957 Ex Sess, ch 13, § 5; Laws, 1966, ch. 293, § 1; Laws, 1968, ch. 284; Laws, 1988 Ex Sess ch. 14, § 11, eff from and after October 1, 1989.

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Legal Forms 2d, Public Securities and Obligations § 214:14 (resolution determining that public interest and necessity require issuance of public securities).

§ 19-9-5. Limitation of indebtedness.

No county shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonds of such county, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such county according to the last completed assessment for taxation, or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.

However, any county in the state which shall have experienced washed-out or collapsed bridges on the public roads of the county for any cause or reason may hereafter issue bonds for bridge purposes as now authorized by law in an amount which, when added to the then outstanding general obligation bonds of such county, shall not exceed either (a) twenty percent (20%) of the assessed value of the taxable property within such county according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.

Provided further, in computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness heretofore or hereafter issued, for the construction of hospitals, ports or other capital improvements which are payable primarily from the net revenue to be generated from such hospital, port or other capital improvement, which revenue shall be pledged to the retirement of such bonds or other evidences of indebtedness, together with the full faith and credit of the county. However, in no case shall any county contract any indebtedness payable in whole or in part from proceeds of ad valorem taxes which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such county according to the last completed assessment for taxation, or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any county which are subject to annual appropriations therefor, or to bonds heretofore or hereafter issued by any county for school purposes, or to bonds issued by any county under the provisions of Sections 57-1-1 through 57-1-51, or to any indebtedness incurred under Section 55-23-8, or to bonds issued under Section 57-75-37.

SOURCES: Codes, 1942, § 2926-03; Laws, 1932, ch. 235; Laws, 1950, ch. 241, § 3; Laws, 1962, ch. 245, § 1; Laws, 1974, ch. 495; Laws, 1982, ch. 347, § 1; Laws, 1985, ch. 476, § 1; Laws, 1987, ch. 424, § 1; Laws, 1989, ch. 499, § 2; Laws, 1992, ch. 499 § 2; Laws, 1995, ch. 526, § 1; Laws, 1996, ch. 419, § 1; Laws, 2001, ch. 602, § 11; Laws, 2005, ch. 315, § 11, eff from and after passage (approved Mar. 14, 2005.)

Editor's Note — The preamble to Laws, 1989, ch. 499, effective from and after October 1, 1989, provides as follows:

"WHEREAS, the Mississippi Department of Natural Resources (DNR), pursuant to the requirements of the Federal Water Pollution Control Act and amendments thereto, has placed numerous municipalities within the state under administrative orders to construct, replace, renovate or improve wastewater treatment and collection facilities which shall comply with the minimum standards under the federal law; and

"WHEREAS, many municipalities have initiated projects funded through a combination of federal, state and local funds made available through a revolving loan fund administered by the Department of Natural Resources; and

"WHEREAS, the refunds in the revolving loan fund have either been exhausted or encumbered and no such funds are currently available to the numerous municipalities that have not initiated projects to comply with the federal law; and

"WHEREAS, failure to comply with the deadlines mandated by the DNR administrative orders, which deadlines are generally in 1991, could result in severe monetary fines and penalties imposed under the federal law; and

"WHEREAS, the Legislature feels that this specific situation is of an emergency nature and that an immediate, viable and economical funding mechanism is necessary to allow affected municipalities to issue bonds without regard to the statutory debt limitation for compliance purposes;"

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Limitation of indebtedness on municipal bonds, see § 21-33-303.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Limitation of indebtedness on school bonds, see §§ 37-59-5, 37-59-7.

Authority of municipalities to issue bonds for community hospitals, health centers, etc., see § 41-13-19.

Applicability of this section to debt owing to pledge of taxes to retire debt incurred pursuant to agreements executed under authority of Mississippi Hospital Equipment and Facilities Authority Act, see § 41-13-25.

Loans made or indebtedness incurred pursuant to Water Pollution Control Revolving Fund Act as indebtedness, see § 49-17-87.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Exclusion of notes issued to finance establishment of stations for the repair and maintenance of public roads from computations of debt limitations under this section, see § 65-7-92.

ATTORNEY GENERAL OPINIONS

Contractual obligation to repay Community Development Block Grant is not bonded indebtedness subject to current 15% bonded debt limitation, but is in the nature of "floating" indebtedness which, when taken together with bonded indebtedness, is subject to current 20% limitation on all general obligation debt. Barry, Sept. 10, 1992, A.G. Op. #92-0722.

A constable has authority to carry a weapon on private property where property owner has restricted possession of weapons on the property only if he enters in performance of his official duties. Null, Dec. 12, 1997, A.G. Op. #97-0783.

RESEARCH REFERENCES

ALR. Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 A.L.R.2d 515.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 523 et seq.

64 Am. Jur. 2d, Public Securities and Obligations § 56.

CJS. 20 C.J.S., Counties §§ 362-366, 414, 415.

§ 19-9-7. Details of county bonds; supplemental powers conferred in issuance of bonds.

All such bonds shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in sums not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) each, and shall be registered as issued, be numbered in a regular series from one (1) upward, and every such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, and each shall be made payable to bearer, and interest shall be evidenced by proper coupons thereto attached.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 2926-04; Laws, 1950, ch. 241, § 4; Laws, 1966, ch. 294, § 1; Laws, 1983, ch. 494, § 7, eff from and after passage (approved April 11, 1983).

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Details of county or regional railroad authority bonds, see § 19-29-33.

Details of municipal bonds, see § 21-33-313.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Details of school bonds, see § 37-59-25.

Authority of municipalities to issue bonds for community hospitals, health centers, etc., see § 41-13-19.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 148 et seq.

§ 19-9-9. Levy of special tax.

The board of supervisors of such county shall annually levy a special tax upon all of the taxable property within the county, which tax shall be sufficient to provide for the payment of the principal of and the interest on such bonds according to the terms thereof.

SOURCES: Codes, 1942, § 2926-04; Laws, 1950, ch. 241, § 4; Laws, 1966, ch. 294, § 1, eff from and after passage (approved May 13, 1966).

Cross References — Levy of special tax in connection with establishment and operation of convention bureaus, see § 17-3-31.

Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 309, 311, 312.

§ 19-9-11. Notice of intention to issue bonds; calling of election.

Before issuing any bonds for any of the purposes enumerated in Sections 19-9-1, 19-9-3, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the board proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three consecutive weeks in at least one newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven days prior to such date. If no newspaper be published in such county, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such resolution for at least twenty-one days next preceding the date fixed therein at three public places in such county. If twenty per cent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county, supervisors district, or road district, as the case may be, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as is provided in Sections 19-9-13, 19-9-15. If no such protest be filed, then such bonds may be issued without an election on the question of the issuance thereof, at any time within a period of two years after the date specified in the above mentioned resolution. However, the board of supervisors, in its discretion, may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to issue such bonds as herein provided.

SOURCES: Codes, 1892, § 312; 1906, § 333; Hemingway's 1917, § 3706; 1930, § 249; 1942, § 2926-05; Laws, 1924, ch. 236; Laws, 1932, ch. 198; Laws, 1950, ch. 241, § 5, ch. 279, § 1; Laws, 1955 Ex Sess ch. 30; Laws, 1971, ch. 479, § 1, eff from and after passage (approved March 31, 1971).

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Elections ordered by petition of qualified electors, see § 19-3-55.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Elections on question of issuing municipal bonds, see § 21-33-307.

Application of this section to provisions relative to elections, see § 23-15-881.

Elections on issue of leasing of facilities by county, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Elections on question of issuing school bonds, see § 37-59-11.

Authority of municipalities to issue bonds for community hospitals, health centers, etc., see § 41-13-19.

Necessity for compliance with provision of this section in issuance of county industrial development authority bonds, see § 57-31-9.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Notice requirements for issuance of bonds for funds borrowed from the Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

JUDICIAL DECISIONS

1. In general.
2. Signing of petition.

1. In general.

Validation proceedings are the exclusive remedy for raising objections in connection with the issuance and sale of bonds, except those which could be or should be raised before the board of supervisors or municipal authorities, and such objections cannot be properly raised in a suit for an injunction. Chambers v. Perry, 183 So. 2d 645 (Miss. 1966).

The choice given by this provision between calling a bond election in the first instance, and publishing notice of intention to issue bonds, does not imply a similar choice in the case of bonds issued under Code 1942, § 7129-51. In re $500,000 Pub. Imp. Gen. Obligation Bonds, 247 Miss. 448, 152 So. 2d 698 (1963).

Where, owing to the withdrawal of names, a protest which must be filed on or before a specified date lacks the requisite number of signers, such number cannot be made up by the filing of protests subsequent to that date, while the sufficiency of the protest is being investigated. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

In determining whether required number of qualified electors had petitioned for election to determine whether county board bonds should be issued, the board of supervisors acts judicially. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

It is the duty of a board of supervisors to canvass the names on petitions filed with it in order to determine whether or not such petitions contain the required number with the requisite qualifications, and, in doing so, the board acts judicially. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

2. Signing of petition.

Tax injunction act (28 USCA § 1341) does not preclude federal District Court from entertaining suit under § 5 of Voting Rights Act of 1965, in which plaintiffs assert that 1971 amendment to § 19-9-11, which added 1500 signature provision, was not precleared under provisions of Voting Rights Act. Pendleton v. Heard, 824 F.2d 448 (5th Cir. 1987).

The number of signers and their qualifications are determined as of the date of the board's adjudication, and not as of the date of filing of the petition. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

Persons who have signed a petition calling for election to determine whether county road bonds should be issued and the petition has been filed with the board of supervisors, have the right to take their names off at any time before final action by the board. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

Where a petition was signed and filed with the clerk of the board of supervisors containing more than 20 percent of the qualified electors of the county, praying that the county road bonds be not issued until after election has been held, and where later a number of the petitioners requested the removal of their names from the original petition and this made a total of less than 20 percent of qualified voters remaining on original petition, the board of supervisors could direct the sale of bonds without holding of election. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 533 (1953), error overruled, 216 Miss. 878, 63 So. 2d 832 (1953).

ATTORNEY GENERAL OPINIONS

Where district lines have changed, any tax levied to fund payment of interest and principal due on bond for road and bridge construction must be levied on all property within old district lines which represent district as it existed when obligation was incurred. Logan, Oct. 12, 1992, A.G. Op. #92-0753.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 126-128.

20 Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 55 (complaint, petition, or declaration for declaratory judgment that ordinance authorizing bond issue is invalid and for injunction restraining payment of bonds issued and issuance of additional bonds).

15 Am. Jur. Legal Forms 2d, Public Securities and Obligations, §§ 214:13 et seq.

§ 19-9-13. Notice of election.

Where an election is to be called, as provided in Section 19-9-11, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three consecutive weeks, in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election, and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county.

SOURCES: Codes, 1942, § 2926-06; Laws, 1950, ch. 241, § 6, eff from and after July 1, 1950.

Cross References — Notice of election on issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-109.

Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Notice of election on question of issuing municipal bonds, see § 21-33-307.

Issuance of bonds authorized, see § 29-3-161.

Elections on issue of leasing of facilities by county, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Notice of election on question of issuing school bonds, see § 37-59-13.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 133, 134.

15 Am. Jur. Legal Forms 2d, Public Securities and Obligations, §§ 214:16-214:18 (notice of bond election).

§ 19-9-15. Holding of election.

Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition.

SOURCES: Codes, 1942, § 2926-07; Laws, 1950, ch. 241, § 7, eff from and after July 1, 1950.

Cross References — Conduct of election on issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-111.

Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Elections on question of issuing municipal bonds, see § 21-33-309.

Elections on issue of leasing of facilities by county, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Elections on question of issuing school bonds, see § 37-59-15.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 133 et seq.

11 Am. Jur. Legal Forms, Public Securities and Obligations, Form 11:190 (ballots for bond election).

§ 19-9-17. Results of election.

When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall be the duty of such board of supervisors to determine and adjudicate whether or not three-fifths (3/5) of the qualified electors who voted in such election voted in favor of the issuance of such bonds. Unless three-fifths (3/5) of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should three-fifths (3/5) of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two years from the date of such election or within two years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best.

SOURCES: Codes, 1942, § 2926-08; Laws, 1950, ch. 241, § 8, eff from and after July 1, 1950.

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Results of municipal bond elections, see § 21-33-311.

Elections on issue of leasing of facilities by county, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Results of school bond elections, see § 37-59-17.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Necessity for compliance with this section prior to issuance of port bonds, see § 59-7-105.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 139 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 44 (complaint, petition, or declaration for declaratory judgment as to validity of approval by electors of act authorizing bond issue and to restrain issuance if invalid).

§ 19-9-19. Maturities, interest, and signatures.

All bonds issued by a county shall mature annually, with all maturities not longer than twenty (20) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of such bonds, not less than one-twenty-fifth (1/25) of the total issue to mature each year during the succeeding ten-year period of the life of such bonds, and the remainder to be amortized, as to principal and interest, into approximately equal annual payments, one (1) payment to mature each year for the remaining life of such bonds. However, in cases where bonds shall be issued or dated subsequent to the date fixed for making the county tax levy in the year in which such bonds are to be issued, the first maturity date of not less than one-fiftieth (1/50) of the total issue, may be fixed for any period not exceeding two (2) years from the date of the bonds with the same schedule of subsequent maturities as hereinabove set forth. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, Mississippi Code of 1972. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1/8 of 1%) or in multiples of one-tenth of one percent (1/10 of 1%), and a zero rate of interest cannot be named. The denomination, form, and place, or places, of payment of such bonds shall be fixed in the resolution or order of the board of supervisors issuing such bonds. Such bonds shall be executed by the manual or facsimile signature of the president of the board of supervisors, or the vice president in the absence or disability of the president, and countersigned by the manual or facsimile signature of the clerk thereof, with the official seal of the county affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the issuing resolution. The coupons may bear only the facsimile signatures of such president, or vice president and clerk. No bonds shall be issued and sold under the provisions of sections 19-9-1 to 19-9-31 for less than par and accrued interest.

SOURCES: Codes, 1942, § 2926-09; Laws, 1950, ch. 241, § 9; Laws, 1958, ch. 208; Laws, 1959 Ex Sess ch. 22, § 6; Laws, 1970, ch. 315, § 1; Laws, 1975, ch. 432; Laws, 1976, ch. 476; Laws, 1980, ch. 490, § 1; Laws, 1981, ch. 455, § 1; Laws, 1982, ch. 434, § 1; Laws, 1983, ch. 541, § 5, eff from and after passage (approved April 25, 1983).

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Maturity and interest on municipal bonds, see § 21-33-315.

Applicability of this section to certificates of indebtedness issued by school districts, see § 37-7-301.

Interest on notes or certificates of indebtedness for removal of asbestos, see § 37-7-302.

Maturities and interest on school bonds, see § 37-59-27.

Interest and maturity of negotiable notes and certificates issued by a school district, see § 37-59-111.

Provision that interest paid on borrowed funds by the Southeast Mississippi Industrial Council shall not exceed the amount allowed by this section, see § 57-32-5.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 155, 185, 346-348.

§ 19-9-21. Proceeds shall not be diverted.

The proceeds of any bonds issued by a county shall be placed in the county treasury or depository, if there be one, as a special fund, and shall be used for no other purpose than that for which such bonds were authorized to be issued. If the board of supervisors of such county, or any member thereof, or any other officer, shall wilfully divert or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued, then such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding five years and, in addition, he shall be liable personally and on his official bond for the amount so diverted. Any member of such board of supervisors may escape the penalty provided for above by requesting and having his vote recorded in the negative on any illegal diversion of the proceeds of such bonds.

SOURCES: Codes, 1942, § 2926-10; Laws, 1950, ch. 241, § 10, eff from and after July 1, 1950.

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Proceeds of municipal bonds, see § 21-33-317.

Proceeds of school bonds, see § 37-59-29.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 82.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 44 (complaint, petition, or declaration to enjoin county commission from diverting funds originally provided for construction of county office building).

§ 19-9-23. Transfer of residue of bond proceeds.

Whenever a balance shall remain of the proceeds of any bond issue after the purpose for which such bonds were issued shall have been accomplished, such balance shall forthwith be transferred to the bond and interest fund applicable to such bond issue.

SOURCES: Codes, 1942, § 2926-11; Laws, 1950, ch. 241, § 11, eff from and after July 1, 1950.

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Transfer of residue of municipal bond proceeds, see § 21-33-319.

Transfer of residue of school bond proceeds, see § 37-59-33.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

ATTORNEY GENERAL OPINIONS

If resolution authorizing issuance of industrial bonds and expenditure of bond proceeds is sufficiently worded to permit expenditure of funds for specific bond purposes, as well as for related purposes, and county owned building falls within such related purposes, county could expend surplus monies directly from industrial bond fund for repair of building; otherwise, funds must be transferred to bond and interest sinking account, provided board finds that purposes for which bonds were issued have been completed. Leggett, August 2, 1993, A.G. Op. #93-0529.

§ 19-9-25. Bond and interest funds may be used to buy outstanding bonds.

Whenever there shall be on hand in any bond and interest fund an amount in excess of the amount which will be required for expenditure therefrom within the next succeeding twelve months, the board of supervisors may use such excess amount to purchase the outstanding bonds of the county which are payable from such fund whenever, in the judgment of such board the best interest of the county would be served thereby. When such bonds are purchased, they shall be cancelled and retired and shall not thereafter be resold or reissued.

SOURCES: Codes, 1942, § 2926-12; Laws, 1950, ch. 241, § 12, eff from and after July 1, 1950.

Cross References — Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Municipal bonds, see § 21-33-321.

Authority for board of supervisors to purchase outstanding bonds generally, see § 31-17-45.

School bonds, see § 37-59-35.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 193.

§ 19-9-27. Borrowing in anticipation of taxes.

The board of supervisors of any county may borrow money in anticipation of taxes for the purpose of defraying the expenses of such county, and may issue negotiable notes of the county therefor, to mature not later than April 1 of the year succeeding the year in which they are issued. The amount of money herein authorized to be borrowed shall not be in excess of twenty-five percent (25%) of the estimated amount of taxes collected and to be collected under the last preceding annual tax levies for the particular fund for which said money is borrowed. The board of supervisors may borrow said money, as hereinbefore provided, from any available fund in the county treasury, or from any other source, and such loan shall be repaid in the manner herein provided. The notes herein authorized shall bear interest at a rate to be fixed by the board, not to exceed that allowed in Section 75-17-105, Mississippi Code of 1972, and such notes shall be payable at any place to be named by the board of supervisors. Any notes or obligations issued in excess of the amount authorized to be issued under the provisions of this section shall be void. Money may be borrowed in anticipation of ad valorem taxes under the provisions of this section, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations.

For the payment of such loan, the board of supervisors shall either pledge the levy of a special tax each year sufficient to pay the amount borrowed for use that year, with interest, or shall pledge that such notes shall be paid out of the first money collected from taxes for the year in which they are issued. The aforesaid special tax, if necessary, may be in excess of the rate of taxation otherwise limited by law. The notes herein authorized shall not be issued until the board of supervisors shall have published notice of its intention to issue same; said notice to be published once each week for three (3) weeks in some newspaper having a general circulation in such county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to issue such notes. If, within the time of giving notice, twenty percent (20%), of fifteen hundred (1500), whichever is less, of the qualified electors of the county shall protest or file a petition against the issuance of such notes, then such notes shall not be issued unless authorized by a three-fifths (3/5) majority of the qualified electors of such county, voting at an election to be called and held for that purpose.

SOURCES: Codes, 1892, § 313; 1906, § 334; Hemingway's 1917, § 3707; 1930, § 251; 1942, § 2926-13; Laws, 1904, ch. 133; Laws, 1920, ch. 227; Laws, 1950, ch. 241, § 13; Laws, 1971, ch. 479, § 2; Laws, 1981, ch. 462, § 1; Laws, 1982, ch. 434, § 2; Laws, 1983, ch. 541, § 6, eff from and after passage (approved April 25, 1983).

Cross References — Borrowing in anticipation of tax levy for the establishment and operation of garbage and rubbish disposal system, see § 19-5-21.

Authority of municipalities to borrow in anticipation of taxes, see § 21-33-325.

Power of a municipality to borrow money in anticipation of taxes, see § 21-33-325.

Interest rate on promissory notes issued by political subdivision in event of ad valorem tax shortfall, see § 27-39-333.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Authority of municipalities and counties to borrow in anticipation of taxes on behalf of school districts, see § 37-59-37.

Authority of board of trustees of school districts to borrow, see § 37-59-101.

Borrowing in anticipation of tax levy for establishing air ambulance services, see § 41-55-45.

Rate of interest which the notes described in this section shall bear, see § 75-17-105.

ATTORNEY GENERAL OPINIONS

Board of Supervisors may institute proceedings to borrow money in anticipation of taxes for purpose of defraying expenses of county when Board reasonably believes that such borrowing is necessary; Board of Supervisors does not have to wait until there is deficiency in operational fund for which money is borrowed to institute statutory proceedings. Elliott, April 26, 1990, A.G. Op. #90-0294.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 512, 565.

64 Am. Jur. 2d, Public Securities and Obligations § 83.

CJS. 20 C.J.S., Counties §§ 357-372.

§ 19-9-28. Borrowing in anticipation of receipt of funds from confirmed federal or state grants or loans.

(1) Any county that shall have received a binding commitment from the United States of America, or any agency thereof, or the State of Mississippi, or any agency thereof, for a grant or loan may borrow money in anticipation or receipt of funds from such confirmed grant or loan unless prohibited by federal or state law or by the terms of the agreement concerning such grant or loan and may assign and pledge as security for such interim financing the proceeds of any such grant or loan. The board of supervisors may borrow said money, as hereinbefore provided, from any available fund in the county treasury, excepting the funds or accounts described in Sections 27-39-323 and 27-39-329(2)(b), or may borrow said money from any other source, and such loan shall be repaid from the first available federal funds received by the county in the manner and subject to the same terms as herein provided.

(2) Such interim financing shall be upon such terms and conditions as may be agreed upon by the issuing county and the party advancing such interim funds or the purchaser of the obligations evidencing such indebtedness; provided, however, that the principal on any such loan, including interfund loans, shall be repaid within a reasonable time after receipt of funds from the United States of America, or from the State of Mississippi, or any agency thereof, the anticipation of which gave rise to said interim financing, and provided that the interest rate on such interim financing shall not exceed that allowed in Section 75-17-107, Mississippi Code of 1972.

(3) In borrowing money under the provisions hereof, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the board of supervisors of the issuing county and may be evidenced by a negotiable note or notes in such form as may be prescribed in such resolution. The indebtedness incurred under this section shall not be considered when computing any limitation of indebtedness of the issuing county established by law.

(4) Such borrowing, whether or not evidenced by a negotiable note or notes, may be placed or sold at public or private sale for such price and in such manner and from time to time as may be determined by the issuing county and the issuing county may pay all expenses, premiums and commissions which its board of supervisors may deem necessary or advantageous in connection with the issuance thereof.

(5) Such borrowing shall be limited to the sum of: (a) the amount of the confirmed grant or loan; (b) the amount of interest payable on such interim financing; and (c) the reasonable cost of incurring such indebtedness or issuing the note or notes evidencing such indebtedness. All moneys borrowed under the authority of this section, including any interfund loans, shall be secured by and repaid from the grant or loan proceeds, earnings on the investment of the grant or loan proceeds and the proceeds of the interim financing, and from any other proceeds, revenues or earnings received by the issuing county in

connection with such grant or loan or with the interim financing, and may be further secured by and repaid from available revenues of a county-owned utility.

(6) In the event grant or loan proceeds pledged to the repayment of the interim financing have not been received in time to pay at maturity all or a portion of the principal of and interest on the indebtedness incurred pursuant to this section, the issuing county may borrow additional moneys pursuant to this section in anticipation of the aforesaid grant or loan proceeds in order to pay at maturity the outstanding principal and interest on the indebtedness previously incurred, provided that the indebtedness originally incurred shall be promptly repaid upon receipt of proceeds of such subsequent borrowings. The issuing county may enter into agreements with one or more lenders obligating such lenders to provide such additional financing upon such terms and conditions as may be agreed upon by the issuing county and the lenders.

(7) This section, without reference to any other statute, when dealing with grant or loan anticipation notes, shall be deemed to be full and complete authority for the borrowing of such funds and the issuance of a note or notes to evidence such indebtedness, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the issuing county in this state shall apply to the borrowing of funds under this section, and no proceedings shall be required for the borrowing of such funds other than registration and those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of this section are hereby conferred.

SOURCES: Laws, 1975, ch. 493, §§ 1, 2; Laws, 1977, ch. 427; Laws, 1980, ch. 473, § 2; Laws, 1982, ch. 451, § 1; Laws, 1983, ch. 541, § 7; Laws, 1985, ch. 514, § 3, eff from and after October 1, 1985.

Cross References — Borrowing by municipalities, see § 21-33-326.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 19-9-29. Investment of surplus funds.

Whenever any county shall have on hand any bond and interest funds, any funds derived from the sale of bonds, special funds, or any other funds in excess of the sums which will be required to meet the current needs and demands of no more than seven (7) business days, the board of supervisors of such county shall invest such excess funds in the following manner:

(a) Such excess funds shall be invested for periods of from fourteen (14) days to one (1) year in interest-bearing time certificates of deposit with or through county depositories serving in accordance with Section 27-105-303 which are willing to accept the same, at a negotiated rate of interest. The negotiated rate of interest shall be at the highest rate possible at the date of purchase or investment for such time certificates of deposit or interest-bearing accounts, but such rate of interest shall not be less than the rate of interest paid to the general public on passbook savings. The rate of interest established herein shall be the minimum rate of interest and there shall be no maximum rate of interest.

(b) The balance, if any, of such excess funds shall be invested in interest-bearing time certificates of deposit for the same maturity periods and at the same rate of interest as prescribed in paragraph (a) of this section in or through state depositories located in such county which are willing to accept the same, to the same extent as such depositories are eligible for invested state funds.

(c) To the extent that the board of supervisors finds that such excess funds cannot be invested pursuant to paragraphs (a) and (b) of this section for the stated maturity of from fourteen (14) days to one (1) year, the board of supervisors may invest such funds in any bonds or other direct obligations of the United States of America, the State of Mississippi, or any county, municipality or school district of this state, if such county, municipal or school district bonds have been approved by a reputable bond attorney or have been validated by a decree of the chancery court, or the board of supervisors may invest such funds, together with any other funds required for current operation, in obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a county or state depository, or the board of supervisors may deposit such funds in interest-bearing accounts with a county or state depository. Such bonds or obligations purchased may have any maturity date, provided that they shall mature or be redeemable prior to the time that the funds so invested will be needed for expenditure.

Any excess funds invested in certificates of deposit or interest-bearing accounts with county or state depositories under this section shall be secured in the manner required by Section 27-105-315. The proceeds of such certificates of deposit shall be immediately reinvested on the date of maturity in accordance with paragraphs (a), (b) and (c) of this section, unless the board of supervisors determines that such funds are required for current operation.

When bonds or other obligations have been purchased, the same may be sold or surrendered for redemption at any time, except certificates of deposit which must mature, by order or resolution of such board of supervisors. The president of the board of supervisors, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof. When such bonds or other obligations are sold or redeemed, the proceeds thereof, including accrued interest thereon, shall be paid into the same fund as that from which the investment was made and shall in all respects be dealt with as are other monies in such fund. Except as hereinafter provided, any interest derived from the investments authorized in this section may, as an alternative, be deposited into the general fund of the county. Any interest derived from the investment of sums received under the terms of the federal State and Local Fiscal Assistance Act of 1972, and any subsequent revisions or reenactments of that act, shall be paid into the same fund as that from which the investment was made. Any interest derived from the investment of school bond funds shall be handled as provided in Section 37-59-43. Any interest derived from investment of other bond proceeds or from investment of any bond and interest fund, bond reserve fund or bond redemption sinking fund shall be deposited either in the same fund from which the investment was made or in the bond and interest fund established for payment of the principal or interest on the bonds. Any interest derived from special purpose funds which are outside the function of general county government shall be paid into that special purpose fund.

SOURCES: Codes, 1942, § 2926-14; Laws, 1950, ch. 241, § 14; Laws, 1970, ch. 316, § 1; Laws, 1977, ch. 426, § 1; Laws, 1985, ch. 514, § 16; Laws, 1995, ch. 567, § 1; Laws, 2007, ch. 426, § 1; brought forward without change, Laws, 2012, ch. 413, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment brought the section forward without change.

Cross References — Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Investment of surplus municipal funds, see § 21-33-323.

Investment of surplus funds from sale of county bonds, etc., generally, see § 31-19-5.

Investment of surplus funds on behalf of school districts, see § 37-59-43.

Provision that entire revenues and realty of drainage district are to be pledged to secure bonds, see § 51-29-91.

Investment of surplus funds of drainage district, see § 51-31-17.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Investment of surplus funds of road districts, see § 65-19-47.

Federal Aspects — The State and Local Fiscal Assistance Act of 1972 (Public Law 92-512), former USCS §§ 6701 et seq., was repealed by Public Law 99-272, Title XIV, § 14001(a)(1), 100 Stat 327.

ATTORNEY GENERAL OPINIONS

Funds being dedicated to the defeasance of general obligation bonds may be invested for times extending beyond one year pursuant to Section 19-9-29(c), if the board of supervisors finds that they cannot be invested for a period of fourteen days to one year under the arrangements made for the defeasance of the bonds. Dulaney, July 19, 1995, A.G. Op. #95-0400.

The members of the Board of Commissioners of the Delta Correctional Facility Authority may only receive such compensation, including per diem compensation, as is permitted by the Board of Supervisors of Leflore County; no duty is imposed upon the Chencery Clerk of Leflore County to insure that DCFA receives interest upon its funds upon deposit, nor is a duty imposed upon a financial institution to pay interest upon public funds when the governing authorities have not insured that the account containing public funds is interest bearing; and the duty insure that securities are pledged for deposited funds of DCFA is upon the board of supervisors, or the president and clerk of the board of supervisors in case the board is not in session. Abraham, January 23, 1998, A.G. Op. #98-0021.

Section 19-9-29 is a general law specifying the manner of investing and the types of investments into which surplus county funds may be placed, and, therefore, Section 19-3-40 does not permit boards of supervisors to invest otherwise. Griffith, April 7, 2000, A.G. Op. #2000-0173.

Interest earned on road and bridge funds and any other special fund must be paid into that special purpose fund. Dulaney, Apr. 19, 2002, A.G. Op. #02-0189.

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

§ 19-9-31. Exclusiveness of procedure.

No interest-bearing indebtedness shall hereafter be incurred by any county except in the manner provided by Sections 19-9-1 through 19-9-31 or as may otherwise be provided by law.

The authority provided for the issuance of bonds for hospitals and related subjects by Sections 41-13-15 through 41-13-53 Mississippi Code of 1972, shall not be affected by the provisions of Sections 19-9-1 through 19-9-31, and the authority herein conferred relative to hospitals and related subjects shall be in addition thereto.

SOURCES: Codes, 1942, §§ 2926-15, 2926-16; Laws, 1950, ch. 241, §§ 15, 16, eff from and after July 1, 1950.

Cross References — Exclusive procedure for municipalities, see § 21-33-327.
Exclusive procedure for school districts, see § 37-59-45.

STATE-AID ROAD BONDS
[REPEALED]

Sec.
19-9-51 through 19-9-77. Repealed

§§ 19-9-51 through 19-9-77. Repealed.

Repealed by Laws of 1985, ch. 477, § 20, eff from and after April 8, 1985.

§§ 19-9-51 through 19-9-77 [Codes, 1942, § 2926-51 through 2926-64; Laws, 1962, ch. 255, § 1 through § 14]

§ 19-9-55 [Laws, 1973, ch. 333, § 1; Laws, 1983, ch. 494, § 8]

§ 19-9-67 [Laws, 1970, ch. 317, § 1; Laws, 1975, ch. 394; Laws, 1976, ch. 447; Laws, 1980; ch. 524; Laws, 1981, ch. 455, § 2; Laws, 1982, ch. 434, § 3].

Editor's Note — Former § 19-9-51 authorized issuance of county road bonds.

Former § 19-9-53 limited the amount of county road bond indebtedness.

Former § 19-9-55 related to the details of county road bonds.

Former §§ 19-9-57 through 19-9-65 related to the manner of payment and procedure for issuance of county road bonds.

Former § 19-9-67 related to the maturities and execution of county road bonds.

Former §§ 19-9-69 through 19-9-77 related to the disposition of the proceeds of county road bonds, the duties of county officers upon issuance of bonds, the effect of the bonds upon other bond issues and limitations of indebtedness, and refunding of bonds.

SPECIAL TAX LEVIES

Sec.

19-9-91. Repealed.
19-9-93. Financing the erection, remodeling, enlargement, or repair of county buildings.
19-9-95. Defrayal of expenses of courts of certain coast counties.
19-9-96. Funding operation of youth court division.
19-9-97. Funding for certain matters of public health.
19-9-99. Securing funds for eradication of fire ants.
19-9-101. Securing funds for maintenance of fair associations.
19-9-103. Funds for advertisement of economic opportunities in certain counties.
19-9-105. Funds for making soil survey maps and land classifications and reports thereof.
19-9-107. Funds for support of industrial and economic development programs in certain counties.
19-9-109. Levy of ad valorem tax for purchase, operation and maintenance of fire trucks and other fire fighting equipment.
19-9-111. Levy of tax for purpose of financing economic development districts.
19-9-113. Funds for support of soil and water conservation district.
19-9-114. Levy of tax for construction of vocational and technical educational center.
19-9-115. Bond for special tax.
19-9-117. Tax levy in second judicial district of Harrison County; issuance and sale of bonds.

§ 19-9-91. Repealed.

Repealed by Laws of 1985, ch. 407, eff from and after March 25, 1985. [Codes, 1942, § 2926.5; Laws, 1958, ch. 219, §§ 1, 2]

Editor's Note — Former § 19-9-91 related to levy of tax for payment of county-wide, supervisors district or district road or bridge bonds, and to disposition of surplus funds.

§ 19-9-93. Financing the erection, remodeling, enlargement, or repair of county buildings.

The board of supervisors of any county may set aside, appropriate and expend moneys from the general fund for the erection, remodeling, enlarging, or repairing of the courthouse, jail or other county buildings.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 11 (1); 1857, ch. 59, art 22; 1871, § 1369; 1880, § 2150; 1892, § 305; 1906, § 324; Hemingway's 1917, § 3697; 1930, § 231; 1942, § 2907; Laws, 1986, ch. 400, § 9, eff from and after October 1, 1986.

Cross References — Making contracts and superintending erection or remodeling of courthouse or jail, see § 19-7-11.

JUDICIAL DECISIONS

1. In general.

An order of the board making a levy of a special tax for the erection, enlarging and remodeling or repairing of the courthouse must designate the purpose for which the levy is made and a designation in the order "courthouse special" is insufficient. Burke v. Leggett, 118 Miss. 660, 79 So. 843 (1918).

Acts 1908 ch. 72 making eighteen mills the maximum rate of taxes that counties can levy, includes all kinds of taxes. Wells v. McNeill, 93 Miss. 407, 48 So. 184 (1909).

ATTORNEY GENERAL OPINIONS

Supervisors cannot levy an ad valorem tax in excess of the maximum allowed for general county purposes, for repair and maintenance of the courthouse and jail. Ops Atty Gen 1939-41, p 54.

§ 19-9-95. Defrayal of expenses of courts of certain coast counties.

The board of supervisors of any county bordering on the Gulf of Mexico and having an assessed valuation of less than Five Million Dollars ($5,000,000.00), is hereby authorized and empowered, in its discretion, to set aside, appropriate and expend moneys from the general fund for the purpose of defraying the expenses of the courts of the county.

SOURCES: Codes, 1942, § 2910; Laws, 1940, ch. 266; Laws, 1986, ch. 400, § 10, eff from and after October 1, 1986.

§ 19-9-96. Funding operation of youth court division.

The board of supervisors of any county may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used for funding of the operation of the youth court division other than a municipal youth court division. Such funds shall be expended for no other purpose than:

(a) Payment of the salaries of the referees, court administrators, youth court prosecutor when court appointed, youth court public defender, court reporters other than regular chancery court or county court reporters, clinical psychologists and other professional personnel, secretaries and other clerical or other court-appointed personnel, detention home employees, shelter home employees, halfway house employees and youth counsellors;

(b) Travel and training expenses;

(c) The operation of a youth court and related facilities, detention facilities, shelter home facilities, group homes and halfway houses;

(d) Volunteer programs or other court-authorized programs;

(e) Providing the youth court referee with a current set of the Mississippi Code of 1972 if a set has not been provided.

SOURCES: Laws, 1980, ch. 550, § 29; Laws, 1985, ch. 536, § 5; Laws, 1986, ch. 400, § 11, eff from and after October 1, 1986.

JUDICIAL DECISIONS

1. In general.

Section 9-17-1, combined with the approval of the Youth Court budget, as mandated by §§ 43-21-123 and 19-9-96, authorized a youth court judge's hiring of a youth court administrator who performed non-judicial, administrative functions of the youth court. Nelson v. State, 656 So. 2d 318 (Miss. 1995).

ATTORNEY GENERAL OPINIONS

A county board of supervisors has the authority to expend funds for the operation of a residential group home for children, which encompasses the authority to contract with a private non-profit corporation to operate that home and to provide funds for the operation of that facility. Barry, Nov. 9, 2001, A.G. Op. #01-0662.

Payment of an attorney legally appointed by a county youth court judge to hear all youth court cases of a contested nature for a period of 30 days is authorized but must come within the youth court budget which has been approved by the county board of supervisors. Sherard, Jan. 18, 2002, A.G. Op. #02-0014.

§ 19-9-97. Funding for certain matters of public health.

The boards of supervisors of the various counties in the state are hereby authorized, in their discretion, to set aside, appropriate and expend moneys from the general fund for treatment of the indigent sick, for the promotion of public health of the county, and for the support and maintenance of a full-time county health department. The boards of supervisors are further authorized, in their discretion, to appropriate and transfer moneys from the general fund to any state agency, department or institution for the purpose of providing health care services or having such services provided to indigent persons of the county.

SOURCES: Codes, 1942, § 2996; Laws, 1938, ch. 315; Laws, 1940, ch. 272; Laws, 1986, ch. 400, § 12; Laws, 1992, ch. 487 § 6, eff from and after passage (approved May 8, 1992).

Cross References — Power of the county board of supervisors of a public health district to appropriate funds for support of county or district health departments, see § 41-3-43.

JUDICIAL DECISIONS

1. In general.

This chapter authorizes a county to levy the one mill as a special tax and such tax was not intended to be included in the general county taxes, as against the contention that the tax was one for general county purposes, and should be included in the five mill limitation under chapter 104, Laws of 1932. Yazoo & Miss. V. Ry. v. Bolivar County, 186 Miss. 824, 191 So. 426 (1939).

In authorizing boards of supervisors of the various counties in their discretion to levy a special tax, this section [Code 1942, § 2996] has the effect of removing the last proviso in Code of 1930, § 9879, and the limitation imposed therein to the effect that counties having an assessed valuation of less than $8,000,000.00 and having no bonded indebtedness shall be allowed to levy one additional mill for the purpose of maintaining a full time health unit, does not apply to a special tax. Yazoo & Miss. V. Ry. v. Bolivar County, 186 Miss. 824, 191 So. 426 (1939).

ATTORNEY GENERAL OPINIONS

This provision is sufficiently broad to allow Chickasaw County to contract with a hospital such as the Houston Community Hospital for the provision of emergency room services for indigent patients. However, before each claim by the hospital for such treatment can be approved for payment by the board, the board must adjudicate the indigence of the patient treated. Fox, Nov. 27, 1991, A.G. Op. #91-0857.

A board of supervisors is vested with the power to purchase real estate on which to construct public health buildings and clinics sponsored by the public health units of any county, or a public health building to house the county health department, out of the general fund and, provided that ultimate control and management of the facilities remains in the hands of local government, the operation of the building may be done pursuant to contract. Gex, January 9, 1998, A.G. Op. #97-0801.

A county board of supervisors may create a nonprofit corporation and serve as the sole member thereof and may fund such corporation from the surplus proceeds of a sale or lease of a community hospital owned by the county, when the funds are expended by the corporation to improve the quality of health care provided to citizens and residents of the county, and providing instruction on the improvement of personal health. Griffith, July 23, 1999, A.G. Op. #99-0370.

The Hinds County Board of Supervisors may expend monies through a contract, based on good and valuable consideration, with the Jackson-Hinds Comprehensive Health Center and Central Mississippi Health Services; the conditions and parameters of the authority to do so is found in this section, which limits the Board to providing treatment for the indigent sick and the promotion of public health of the county. Haque, July 23, 1999, A.G. Op. #99-0319.

§ 19-9-99. Securing funds for eradication of fire ants.

The board of supervisors of any county of the state may, in its discretion, set aside, appropriate and expend moneys from the general fund for the purpose of securing funds with which to cooperate with the Commissioner of Agriculture and Commerce in eradicating fire ants, as authorized by Section 69-25-33.

SOURCES: Codes, 1942, § 2986.5; Laws, 1964, ch. 285, §§ 1-3; Laws, 1968, ch. 294; Laws, 1986, ch. 400, § 13, eff from and after October 1, 1986.

Cross References — Homestead exemptions, see §§ 27-33-1 et seq.

Authority of board of supervisors to appropriate money for the purpose of eradicating insect pests, rodents, etc., see § 69-25-33.

§ 19-9-101. Securing funds for maintenance of fair associations.

The board of supervisors of any county in the State of Mississippi may, in its discretion, set aside, appropriate and expend moneys from the general fund for the purpose of securing funds with which to maintain fair associations, including the upkeep, repairs and payment of the necessary prizes and awards of said associations.

SOURCES: Codes, 1942, § 2985.5; Laws, 1960, ch. 172, §§ 1-3; Laws, 1986, ch. 400, § 14, eff from and after October 1, 1986.

Cross References — Homestead exemptions, see §§ 27-33-1 et seq.

ATTORNEY GENERAL OPINIONS

Section 19-9-101 authorizes the county to secure or appropriate funds from its general fund to use in maintaining fair associations. Dyson, September 9, 1995, A.G. Op. #95-0547.

Section 19-9-101 provides no authority for the board of supervisors to levy a special tax for fair associations. Dyson, September 9, 1995, A.G. Op. #95-0547.

§ 19-9-103. Funds for advertisement of economic opportunities in certain counties.

The boards of supervisors of all counties in the State of Mississippi situated wholly or partially in a levee district may, within their discretion, set aside, appropriate and expend moneys from the general fund for the purpose of deriving funds for advertising and bringing into favorable notice the opportunities, possibilities and resources of such counties.

The boards of supervisors of such counties may in their discretion cooperate with and appropriate funds to the Delta Council for advertising purposes as herein provided.

SOURCES: Codes, 1942, § 2980; Laws, 1940, ch. 321; Laws, 1986, ch. 400, § 15, eff from and after October 1, 1986.

§ 19-9-105. Funds for making soil survey maps and land classifications and reports thereof.

The board of supervisors of any county in the State of Mississippi is hereby authorized and empowered, in its discretion, to set aside, appropriate and expend moneys from the general fund in cooperating with the Mississippi State Experiment Station and the Department of Agriculture of the United States of America in having made soil survey maps and land classifications and reports thereof.

The funds set aside for said purpose shall be appropriated by the board of supervisors upon the presentation and allowance of itemized bills therefor, as provided by law.

SOURCES: Codes, 1942, § 2911; Laws, 1940, ch. 267; Laws, 1986, ch. 400, § 16, eff from and after October 1, 1986.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-9-107. Funds for support of industrial and economic development programs in certain counties.

In any Class 5 county having an area between five hundred eighty (580) and six hundred fifteen (615) square miles and having a population between twenty-one thousand, six hundred eighty-one (21,681) and twenty-two thousand, six hundred eighty-one (22,681) according to the 1950 decennial census, and traversed by U.S. Highway No. 80 and in which is located a state park or junior college, and in any Class 6 county having an area between five hundred seventy-five (575) and six hundred seventy-five (675) square miles and having a population between twenty-one thousand (21,000) and twenty-two thousand (22,000) according to the 1950 decennial census, and traversed by the Natchez Trace, and in any Class 7 county having an area in excess of six hundred forty (640) square miles and a population between sixteen thousand (16,000) and seventeen thousand (17,000) according to the 1950 decennial census, and wherein there are located producing oil or gas wells, and in any Class 1 county in which there is located a state-supported college for women and a U.S. Air Force Base, the boards of supervisors are hereby authorized and empowered, in their discretion, to set aside, appropriate and expend moneys from the general fund which shall be used for the industrial and economic development programs of said counties through donations to industrial development corporations, and to maintain and support the same.

SOURCES: Codes, 1942, § 2911.5; Laws, 1960, ch. 194; Laws, 1964, ch. 289; Laws, 1986, ch. 400, § 17, eff from and after October 1, 1986.

ATTORNEY GENERAL OPINIONS

A private industrial development corporation may not use funds appropriated to it by a board of supervisors under the statute to lease a building from the county at fair market value and thereafter sublease the building to physicians. Webb, May 15, 1998, A.G. Op. #98-0246.

§ 19-9-109. Levy of ad valorem tax for purchase, operation and maintenance of fire trucks and other fire fighting equipment.

In order to fund such expenditures as may arise pursuant to the authority granted by Section 19-5-97 to boards of supervisors of any county to purchase, operate, and maintain fire trucks and other fire fighting equipment, such boards of supervisors are empowered to levy an annual ad valorem tax not to exceed one-fourth (¼) of one mill in such supervisors districts as participate in the provisions of Section 19-5-97. However, such tax shall not be levied upon any of the taxable property of the county or districts thereof lying in a municipality which furnishes fire protection within its corporate limits. No part of such additional levy shall be reimbursable under Sections 27-33-1 through 27-33-65, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 2912.3; Laws, 1968, ch. 283, § 1, eff from and after passage (approved June 21, 1968).

Cross References — County volunteer fire department fund, see § 83-1-39.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 48, 54.

§ 19-9-111. Levy of tax for purpose of financing economic development districts.

The board of supervisors of any county authorized to establish or cooperate in the establishment of economic development districts pursuant to Section 19-5-99 may, in its discretion, levy a tax of not more than two (2) mills against the taxable property in the county or the portion thereof comprising an economic development district, to be used to support and maintain such district. The levy so made shall be in addition to all other levies provided by law.

Before any such levy is made, the board of supervisors shall signify its intention to make such a levy and publish same in a newspaper published in said county for thirty (30) days prior to making said levy. In the event more than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of said economic development district protest in writing to the board of supervisors against the imposition of such tax levy within thirty (30) days from the date such notice is published, then such proposed tax levy shall not be made unless same is approved by a special election called for said purpose. Said special election shall be conducted and had as provided by law.

The governing authorities of any municipality in a county, which has established an economic development district or which is included in an economic development district, may contribute to the support of such economic development district from its general fund.

SOURCES: Codes, 1942, § 2911.3; Laws, 1960, ch. 187.5; Laws, 1962, ch. 254 §§ 1-5; Laws, 1985, ch. 441, § 2, eff from and after October 1, 1985.

Cross References — County and municipal appropriations to planning and development districts, see § 17-19-1.

Establishment of an economic development district by the board of supervisors of a county, see § 19-5-99.

ATTORNEY GENERAL OPINIONS

A county economic development district may transfer any or all of the funds from the capital account to the operations account as long as expenditures from the operations account are for the support and maintenance of the district. Ducker, Nov. 11, 2003, A.G. Op. 03-0458.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-9-113. Funds for support of soil and water conservation district.

The board of supervisors of any county in the State of Mississippi, in its discretion, is hereby authorized to set aside, appropriate and expend moneys from the general fund for the support of the county's soil and water conservation district.

SOURCES: Codes, 1942, § 2986.3; Laws, 1971, ch. 485, §§ 1, 2; Laws, 1974, ch. 489; Laws, 1986, ch. 400, § 18, eff from and after October 1, 1986.

Cross References — Soil conservation districts law, see §§ 69-15-115, 69-15-201 et seq.

ATTORNEY GENERAL OPINIONS

A county is not responsible for paying the costs of life, health and workers' compensation insurance premiums, matching social security and medicare, retirement benefits, and like expenses for soil and water conservation district employees. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

The appropriate method for the transfer of funds to a Soil and Water Conservation District is a determination left to the discretion and judgment of the board of supervisors. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-9-114. Levy of tax for construction of vocational and technical educational center.

The board of supervisors of any county bordering on the Gulf of Mexico having a population according to the 1970 census of 134,582 persons, and having two cities located therein each having a population of over 30,000 persons according to the 1970 census, and in which is located a deep water port of entry and two military establishments located therein, is hereby authorized and empowered, in its discretion, to levy an additional ad valorem tax not to exceed one (1) mill to provide funds for the construction of a facility to house a county-wide vocational and technical educational center. Such additional levy may be in excess of and in addition to the rate of taxation otherwise limited by law.

The tax herein authorized shall not be levied until the board of supervisors shall have published notice of its intention to levy same. Said notice shall be published once each week for three (3) weeks in some newspaper having a general circulation in such county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to levy such tax. If, within the time of giving notice, twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the county shall protest or file a petition against the levy of such tax, then such tax shall not be levied unless authorized by a three-fifths (3/5) majority of the qualified electors of such county voting at an election to be called and held for that purpose.

SOURCES: Codes, 1942, § 6495.5; Laws, 1972, ch. 517, §§ 1, 2, eff from and after passage (approved May 22, 1972).

Cross References — Vocational education generally, see §§ 37-31-1 et seq.

§ 19-9-115. Bond for special tax.

When any special tax may be levied for county purposes, the board of supervisors may require the tax collector to give an additional bond for the faithful collection and payment of the same.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art 11 (3); 1857, ch. 59, art 28; 1871, § 1376; 1880, § 2157; 1892, § 316; 1906, § 337; Hemingway's 1917, § 3710; 1930, § 232; 1942, § 2908.

JUDICIAL DECISIONS

1. In general.

If a special bond be not required, the general bond will be liable for a special tax. State v. Hathorn, 36 Miss. 491 (1858).

§ 19-9-117. Tax levy in second judicial district of Harrison County; issuance and sale of bonds.

The board of supervisors of Harrison County shall have the power and it shall be its duty to levy upon the property of the second judicial district whatever taxes may be required to meet the expenditures called for and required by the construction of the courthouse and offices and in order to secure funds for the procuring of and the erection, construction or alteration of any required building or buildings, the lands on which the same shall be, be erected, constructed, added to or altered, and any other expenditures authorized and required by law, including furnishing and equipping of said courthouse and offices. Said board shall have the power to borrow money by issuing and selling the bonds of the second district to an amount not exceeding the sum of Two Million Dollars ($2,000,000.00) for the aforesaid purposes as set out in this section. Said bonds shall be issued in the same manner as provided in Sections 19-9-1 through 19-9-31.

SOURCES: Codes, 1942, § 2910-22; Laws, 1962, ch. 257, § 22, eff from and after passage (approved June 1, 1962).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 48, 54.

PAYMENTS TO COUNTIES IN WHICH NUCLEAR GENERATING PLANTS ARE LOCATED

Sec.	
19-9-151.	Distributions to situs counties.
19-9-153.	Distributions to municipalities within situs counties.
19-9-155.	Limitations on expenditure of funds by situs counties.
19-9-157.	Payment of excess funds to governing authorities of public school districts; use of funds; borrowing in anticipation of payment.

§ 19-9-151. Distributions to situs counties.

The in-lieu payments made to the State Tax Commission pursuant to Section 27-35-309(3)(b), excluding payments made in excess of Sixteen Million Dollars ($16,000,000.00) which are required to be paid into the General Fund of the state, shall be distributed by the State Tax Commission as follows:

(a) For fiscal year 1987, fifty percent (50%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(b) For fiscal year 1988, forty-five percent (45%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(c) For fiscal year 1989, forty percent (40%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(d) For fiscal year 1990, thirty-five (35%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(e) For fiscal year 1991 and thereafter, thirty percent (30%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located.

SOURCES: Laws, 1986, ch. 507, § 2, eff from and after passage (approved April 23, 1986).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Distributions to municipalities by the boards of supervisors of situs counties and equal division of payments between a situs county and a situs municipality, see § 19-9-153.

Provision that, upon receipt of payments under this section, less the payment made according to § 19-9-153, the board of supervisors shall pay certain remaining funds to the governing authorities of public school districts, see § 19-9-157.

Distribution of remainder of payments received with respect to nuclear generating plants, after distribution of payments as set forth in this section, see § 27-35-309.

§ 19-9-153. Distributions to municipalities within situs counties.

Of the funds received pursuant to Section 19-9-151 by a situs county wherein such nuclear generating plant is located, the board of supervisors of such situs county shall distribute ten percent (10%) of each payment, upon receipt, to the most populous incorporated municipality within the county; however, if such plant is located within a municipality, such payments which would otherwise be made to the situs county pursuant to Section 19-9-151 shall be divided equally between the situs county and situs municipality.

SOURCES: Laws, 1986, ch. 507, § 3, eff from and after passage (approved April 23, 1986).

Cross References — General limitations on the expenditure by situs counties of funds retained after payments made pursuant to this section, see § 19-9-155.

Provision that, upon receipt of payments under § 19-9-151, less the payment made according to this section, the board of supervisors shall pay certain remaining funds to the governing authorities of public school districts, see § 19-9-157.

§ 19-9-155. Limitations on expenditure of funds by situs counties.

Of the funds retained by the situs county after the payment made pursuant to Section 19-9-153, not more than Five Million Five Hundred Thousand Dollars ($5,500,000.00) per year may be expended by the board of supervisors of the county for any purposes for which a county is authorized by law to levy an ad valorem tax, and any funds in excess of such amount shall be expended in accordance with Section 19-9-157.

SOURCES: Laws, 1986, ch. 507, § 4, eff from and after passage (approved April 23, 1986).

ATTORNEY GENERAL OPINIONS

Plain language of Section 27-35-309(3)(b) and Section 19-9-155 is sufficiently broad to allow Claiborne County, unlike counties receiving distributions pursuant to Section 27-35-309(3)(f), flexibility and discretion to allocate its in lieu payments among any one or more of various funds supported in whole or part by ad valorem taxes levied and collected by the county and therefore county had discretionary authority to allocate in lieu payments to public school district. Burell, Jan. 5, 1994, A.G. Op. #93-0960.

§ 19-9-157. Payment of excess funds to governing authorities of public school districts; use of funds; borrowing in anticipation of payment.

The board of supervisors of the situs county, upon receipt of the payments pursuant to Section 19-9-151 less the payment made according to Section 19-9-153, shall pay all such funds in excess of Five Million Five Hundred Thousand Dollars ($5,500,000.00) to the governing authorities of the public school districts in such county in the proportion that the average daily attendance for the preceding scholastic year of each school district bears to the total average daily attendance of the county for the preceding scholastic year. Such funds may be expended only for the purposes of capital improvements to school facilities and only after plans therefor have been submitted to and approved by the Educational Finance Commission or its successor. The governing authorities of such school districts may borrow money in anticipation of receipt of payments pursuant to this section and the levying authority for the school district may issue negotiable notes therefor, for the purposes set forth herein. Such loan shall be repaid from the payments received under this section by the governing authorities of the public school district. However, no public school districts within the situs county shall be entitled to any payments after January 1, 1990.

SOURCES: Laws, 1986, ch. 507, § 5; Laws, 1990, ch. 524, § 1; brought forward, Laws, 1990 Ex Sess, ch. 12, § 3, eff from and after passage (approved June 26, 1990).

Editor's Note — Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission", when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

Cross References — General limitations on the expenditure of funds by situs counties, see § 19-9-155.

DISTRIBUTION OF REVENUE TO PUBLIC SCHOOL DISTRICTS IN COUNTIES IN WHICH LIQUEFIED NATURAL GAS TERMINALS OR CRUDE OIL REFINERIES ARE LOCATED

SEC.
19-9-171. Distribution of revenue from ad valorem taxes levied on certain liquefied natural gas terminals or crude oil refineries to public school districts in situs counties.

§ 19-9-171. Distribution of revenue from ad valorem taxes levied on certain liquefied natural gas terminals or crude oil refineries to public school districts in situs counties.

The revenue from ad valorem taxes for school district purposes that are levied upon liquefied natural gas terminals or improvements thereto constructed after July 1, 2007, crude oil refineries constructed after July 1, 2007, and expansions or improvements to existing crude oil refineries constructed after July 1, 2007, shall be distributed to all public school districts in the county in which the facilities are located in the proportion that the average daily attendance of each school district bears to the total average daily attendance of all school districts in the county. The county or municipal tax collector, as the case may be, shall pay such tax collections, except for taxes collected for the payment of the principal of and interest on school bonds or notes and except for taxes collected to defray collection costs, into the appropriate school depository and report to the school board of the appropriate school district at the same time and in the same manner as the tax collector makes his payments and reports of other taxes collected by him.

SOURCES: Laws, 2007, ch. 533, § 2, eff from and after passage (approved Apr. 18, 2007.)

Editor's Note — Laws of 2007, ch. 533, § 6 provides as follows:
"SECTION 6. Section 5 of this act shall take effect and be in force from and after October 1, 2007. The remainder of this act shall take effect and be in force from and after its passage."

CHAPTER 11

County Budget

Sec.
19-11-1. Short title.
19-11-3. Definition of clerk.
19-11-5. Fiscal year.
19-11-7. Preparation and publication of annual budget.
19-11-9. Form of budget.
19-11-11. Contents and approval of final budget.
19-11-13. Keeping of uniform system of accounts.
19-11-15. Expenditure of funds.
19-11-17. Budget estimates not to be exceeded.
19-11-19. Revision of county budget.
19-11-21. Emergency expenditures.
19-11-23. Monthly report of clerk.
19-11-25. When appropriations made under budget lapse.
19-11-27. Certain expenditures for last year of term limited.

§ 19-11-1. Short title.

This chapter shall be cited as the "County Budget Law."

SOURCES: Codes, 1942, § 9118-01; Laws, 1950, ch. 247, § 1, eff from and after August 31, 1950.

Cross References — County and municipal appropriations to planning and development districts, see § 17-19-1.

Municipal budgets, see §§ 21-35-1 et seq.

County or municipal appropriations for railroad rehabilitation or improvement, see § 57-43-9.

ATTORNEY GENERAL OPINIONS

The ultimate decision as to who can allocate expenditures to the court budget rests with the board of supervisors pursuant to the procedures set forth at Section 19-11-1 et seq. Coleman, August 31, 1995, A.G. Op. #95-0562.

§ 19-11-3. Definition of clerk.

The word "clerk," as used in this chapter, shall mean the chancery clerk acting in his official capacity as the clerk of the board of supervisors and as the county auditor.

SOURCES: Codes, 1942, § 9118-02; Laws, 1950, ch. 247, § 2, eff from and after August 31, 1950.

Cross References — Duties of clerk of board of supervisors, see § 19-3-27.

Clerk of board of supervisors serving as county auditor, see § 19-17-1.

§ 19-11-5. Fiscal year.

Each county of the State of Mississippi shall operate on a fiscal year basis, beginning October first and ending September thirtieth of each year.

SOURCES: Codes, 1942, § 9118-03; Laws, 1950, ch. 247, § 3, eff from and after August 31, 1950.

Cross References — State's fiscal year, see Miss. Const. Art. 4, § 115.
Fiscal year for municipalities, see § 21-35-3.
Fiscal year for county school system, see § 37-61-1.

§ 19-11-7. Preparation and publication of annual budget.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

(1) The board of supervisors of each county of the State of Mississippi shall, at its August meeting of each year, prepare a complete budget of revenues, expenses and a working cash balance estimated for the next fiscal year, which shall be based on the aggregate funds estimated to be available for the ensuing fiscal year for each fund, from which such estimated expenses will be paid, exclusive of school maintenance funds, which shall be shown separately. Such statement of revenues shall show every source of revenue along with the amount derived from each source. The budget containing such statement of revenues and expenses shall be published at least one (1) time during August or September but not later than September 30 of the year in a newspaper published in the county, or if no newspaper is published therein, then in a newspaper having a general circulation therein.

(2) The board of supervisors shall not prepare a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

(1) The county administrator of each county of the State of Mississippi shall prepare and submit to the board of supervisors at its August meeting of each year a complete budget of revenues, expenses and a working cash balance estimated for the next fiscal year, which shall be based on the aggregate funds estimated to be available for the ensuing fiscal year for each fund, from which such estimated expenses will be paid, exclusive of school maintenance funds, which shall be shown separately and exclusive of the budget of the sheriff's department which shall be prepared by the sheriff. Such statement of revenues shall show every source of revenue along with the amount derived from each source. The budget, including the sheriff's budget, containing such statement of revenues and expenses shall be published at least one (1) time during August or September but not later

than September 30 of the year in a newspaper published in the county, or if no newspaper is published therein, then in a newspaper having a general circulation therein.

(2) The county administrator shall not prepare a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

SOURCES: Codes, 1930, § 3970; 1942, § 9118-04; Laws, 1926, ch. 217; Laws, 1940, ch. 282; Laws, 1950, ch. 247, § 4; Laws, 1954, ch. 319, § 1; Laws, 1958, ch. 549, § 3; Laws, 1970, ch. 539, § 1; Laws, 1985, ch. 514, § 4; Laws, 1986, ch. 350, § 1; Laws, 1988 Ex Sess, ch. 14, § 12; Laws, 2000, ch. 605, § 1; Laws, 2005, ch. 334, § 1, eff from and after July 1, 2005.

Cross References — Publication of proceedings of board of supervisors, see §§ 19-3-33, 19-3-35.

Provision that final budget shall set out the working cash balance necessary for next fiscal year, subject to the limitation on the amount of such balance under this section, see § 19-11-11.

Municipal budgets, see § 21-35-5.

Submission of budget requests to legislative budget office, see § 27-103-127.

JUDICIAL DECISIONS

1. In general.

Persons dealing with the board of supervisors of the county must see that their contracts are legal. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

In an action by mechanic's administrator for repairs made to road machinery of the county, where the repairs were necessary and the charges were reasonable, the administrator was entitled to the entire amount of his claim. Carroll County v. Shook, 216 Miss. 232, 62 So. 2d 311 (1953).

In an action by mechanic's administrator for repairs made to heavy road machinery of county, the county failed to establish its affirmative defense that payment of the claim would have violated the county budget law, where the county did not show that at times the work was done and the obligations sued on were incurred the county had exceeded its budget. Carroll County v. Shook, 216 Miss. 232, 62 So. 2d 311 (1953).

§ 19-11-9. Form of budget.

The budget of expenses, revenues and working cash balance shall be prepared in such form as may be necessary, upon forms to be prescribed by the State Auditor, as the head of the State Department of Audit, or by the director thereof appointed by the State Auditor. Such budget of expenses shall show in detail all estimates of the expenditures to be made out of the general county fund and its auxiliary funds, all estimates of expenditures to be made out of the road and bridge maintenance and construction funds, and all amounts to be paid out of the several bond and interest sinking funds for the bonded debt service in the next fiscal year.

SOURCES: Codes, 1930, § 3971; 1942, § 9118-05; Laws, 1922, ch. 225; Laws, 1950, ch. 247, § 5; Laws, 1985, ch. 514, § 5, eff from and after October 1, 1985.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Municipal budgets, see § 21-35-7.

Submission of budget requests to legislative budget office, see § 27-103-127.

ATTORNEY GENERAL OPINIONS

With regard to having a separate category or item in the budget, this is permissible as long as the budget conforms with the forms and accounting systems as prescribed by the State Department of Audit pursuant to Sections 19-11-9 and 19-11-13. Bradley, March 8, 1996, A.G. Op. #96-0057.

§ 19-11-11. Contents and approval of final budget.

(1) The budget as finally determined, in addition to setting out separately each general item of expenditure for which appropriations are to be made and the fund out of which the same is to be paid, shall set out the total amount to be expended from each fund, the anticipated working cash balance in the fund at the close of the present fiscal year, the estimated amount, if any, which shall accrue to the fund from sources other than taxation for the new fiscal year, and the amount necessary to be raised for each fund by tax levy during such fiscal year, and the working cash balance which the board determines necessary for the next fiscal year. The board of supervisors, not later than September 15th, shall then, by resolution, approve and adopt the budget as finally determined, and enter the same at length and in detail in its official minutes, and in like manner the said board shall enter the budget of estimated expenses for the county department of education which shall have been prepared and presented to the board by the county superintendent of education as provided by law.

(2) The board of supervisors shall not adopt a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

SOURCES: Codes, 1942, § 9118-09; Laws, 1950; Laws, 1985, ch. 514, § 6; Laws, 1986, ch. 350, § 2; Laws, 2005, ch. 334, § 2, eff from and after July 1, 2005.

Cross References — Municipal budgets, see § 21-35-9.

§ 19-11-13. Keeping of uniform system of accounts.

The clerk of the board of supervisors of each county shall open and keep a regular set of books, as prescribed by the state auditor, as the head of the state department of audit, or by the director thereof appointed by the state auditor. Such set of books, known as the "uniform system of accounts for the counties," shall always be subject to inspection within office hours by any citizen desiring to inspect same. Said books shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may at once be known. It shall be the duty of said clerk to enter all receipts and expenditures in the said books or system of accounts monthly, post and balance the ledgers thereof at the end of each month so that all information needed for a comprehensive review of operations of the county under budgetary limitations may be readily obtainable. Such books shall be paid for out of the general county fund, upon the order of the board of supervisors.

SOURCES: Codes, 1930, § 3972; 1942, § 9118-06; Laws, 1922, ch. 225; Laws, 1950, ch. 247, § 6, eff from and after August 31, 1950.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Duties of clerk in receiving, filing and paying claims, see § 19-13-29.

Municipal budgets, see § 21-35-11.

ATTORNEY GENERAL OPINIONS

President of board of supervisors must check all of claims on claims docket and evidence by his signature that he/she has checked these claims and that they appear to be in order at least once month and before meeting at which claims are considered; president does not have to sign ledger claims on daily basis or as often as claims are entered on claims docket; it is sufficient if he/she signs claims docket once month before meeting at which claims are considered. Barry Sept. 22, 1993, A.G. Op. #93-0519.

With regard to having a separate category or item in the budget, this is permissible as long as the budget conforms with the forms and accounting systems as prescribed by the State Department of Audit pursuant to Sections 19-11-9 and 19-11-13. Bradley, March 8, 1996, A.G. Op. #96-0057.

A comptroller or bookkeeper may be assigned county bookkeeping functions that appear redundant of the duties of the Chancery Clerk, but such assignment may not infringe on the clerk's exercise of his statutory responsibilities in regard thereto; furthermore, the comptroller must submit to the clerk all information requested by him to enable the clerk to fulfill his statutory responsibilities and he clerk may refuse to sign a warrant until he has been provided necessary documentation. Miller, Apr. 18, 2003, A.G. Op. 03-0172.

§ 19-11-15. Expenditure of funds.

The board of supervisors of each and every county of the state shall at all times keep within the sum named in its said budget and within the annual revenue, always seeking to lessen expenditure instead of exceeding revenue and budget estimates. The amount appropriated and authorized to be expended for any item contained in such budget must not exceed the amount actually estimated for such item, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, or for extraordinary court expenses, shall not exceed the total amount actually estimated for all purposes. The total expenditures authorized to be made from any fund shall exclude reserves added thereto, and the total shall not, in any event, exceed the aggregate of the cash balance, excluding reserves, in such funds at the close of the fiscal year immediately preceding, plus the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the current fiscal year.

SOURCES: Codes, 1942, § 9118-08; Laws, 1950, ch. 247, § 8, eff from and after August 31, 1950.

Cross References — Municipal budgets, see § 21-35-15.

JUDICIAL DECISIONS

1. In general.

The primary aim of the county budget law is to prohibit deficit spending and the provisions of the law are mandatory and the law applies to expenditures made by the board of supervisors for road purposes, whether such expenditures are made by the board under a county unit plan or under supervisor's district unit plan. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

§ 19-11-17. Budget estimates not to be exceeded.

No expenditures shall be made, or liabilities incurred, or warrants issued, in excess of the budget estimates as finally determined by the board of supervisors, or as thereafter revised under the provisions of this chapter. The board of supervisors shall not approve any claim, and the clerk shall not issue any warrant for any expenditures in excess of the budget estimates thus made and approved by the board of supervisors, or as thereafter revised under the provisions of this chapter, except upon the order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any violation of the provisions of this section shall make the members of the board of supervisors voting for same, and the surety upon their official bonds, liable for the full amount of the claim allowed, the contract entered into, or the public work provided for, and the state auditor, as the head of the state department of audit, shall be authorized to sue for the recovery of the sum or sums so voted.

SOURCES: Codes, 1930, § 3973; 1942, § 9118-10; Laws, 1922, ch. 225; Laws, 1950, ch. 247, § 10, eff from and after August 31, 1950.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Penalty for claiming and receiving unauthorized compensation from county, see § 19-13-35.

Municipal budgets, see § 21-35-17.

JUDICIAL DECISIONS

1. In general.

The section gives the state auditor exclusive authority to sue for sums charged to be due. Newly elected members of the county board of supervisors were without authority to bring a suit against the defeated members of the board and their sureties to recover amounts alleged to have been illegally expended. Lincoln County v. Entrican, 230 So. 2d 801 (Miss. 1970).

§ 19-11-19. Revision of county budget.

(1) When it shall appear to the board of supervisors that collection of anticipated revenues from taxation and/or other sources for any fund or funds of any county will be more than the amounts estimated, or when it appears that such revenues will be less than estimated, the board of supervisors may revise the budget of expenses at any regular meeting during the fiscal year by increasing or decreasing the items of said budget in proportion to the increase or decrease in the anticipated revenue collections and/or other sources of funds. When it shall appear to the board of supervisors that some item of the budget is in excess of the requirements of said item, and that the amount budgeted to such item will not be needed during the fiscal year, the board may, at any regular meeting, transfer funds to and from items within the budget when and where needed, but no such transfer shall be made from fund to fund, or from item to item, which will result in the expenditure of any money for a purpose different from that for which the tax was levied. However, revisions as herein authorized shall not be deemed to permit any expenditures in excess of the various items of the budget as then approved, and any expenditures made in excess of the budget as then approved shall be invalid, and subsequent revision shall not validate such expenditures. The revisions made in the budget, from time to time, shall be spread upon the official minutes of the board at the meeting at which any such revision is made.

(2) The reductions authorized under this section shall not exceed the reduction restrictions under Section 19-11-11.

SOURCES: Codes, 1930, § 3976; 1942, § 9118-14; Laws, 1924, ch. 216; Laws, 1928, ch. 5; Laws, 1950, ch. 247, § 14; Laws, 2005, ch. 334, § 3, eff from and after July 1, 2005.

Cross References — Municipal budgets, see § 21-35-25.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 19-11-19 a board order is necessary before any budget is revised. The board is not obligated to grant any request to revise any particular budget but may exercise its discretion to do so. Caldwell, October 4, 1996, A.G. Op. #96-0645.

An order of the board of supervisors is necessary before any budget is revised. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

§ 19-11-21. Emergency expenditures.

Upon the happening of any emergency caused by fire, flood, storm, epidemic, riot or insurrection, or caused by an inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary, or when the restoration of a condition of usefulness of any public building or other property which has been destroyed by accident or otherwise, is necessary, or when mandatory expenditures required by law must be met, the board of supervisors may, upon adoption, by unanimous vote of all members present at any meeting, of a resolution stating the facts constituting the emergency and entering the same on its minutes, make the expenditures, borrow money or incur the liabilities necessary to meet such emergency, without further notice or hearing, and may revise the budget accordingly. The clerk then shall be authorized to issue emergency warrants drawn against the special fund or funds properly chargeable with such expenditures, and upon presentation of such warrants the county depository shall pay same with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds, from usual sources or from grants, transfers or donations, to pay such warrants, the board of supervisors of the county is hereby authorized to borrow the required amount, not to exceed the authorized emergency expenditure, and shall execute the notes of the county for the amount so borrowed, and the board of supervisors, in such event shall be authorized to levy a special tax, not to exceed two mills on the dollar, for the repayment of such notes, which shall be made to mature not later than the 15th day of March next succeeding the date of issuance.

SOURCES: Codes, 1930, § 3974; 1942, § 9118-11; Laws, 1922, ch. 225; Laws, 1950, ch. 247, § 11, 1966, ch. 307, § 1, eff from and after passage (approved April 20, 1966).

Cross References — Municipal budgets, see § 21-35-19.

Expenditure of general fund monies to match funds available to support the arts, see § 39-15-1.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 19-11-21 does not encompass emergency expenditures for purpose of alleviating financial problems of community hospital. Chamberlin, May 20, 1993, A.G. Op. #93-0311.

§ 19-11-23. Monthly report of clerk.

At the regular meeting in each month, the clerk shall submit to the board of supervisors of the county a report showing the expenditures and liabilities incurred against each separate budget item during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each budget item and the unencumbered balance in each fund. He shall also set forth the receipts from property tax and, in detail, the receipts from other taxes and all other sources by each fund for the same period.

SOURCES: Codes, 1942, § 9118-13; Laws, 1950, ch. 247, § 13, eff from and after August 31, 1950.

Cross References — Municipal budgets, see § 21-35-13.

§ 19-11-25. When appropriations made under budget lapse.

All appropriations of funds made under the provisions of a budget for a fiscal year shall lapse at the end of such year, and all books shall close September 30. All disbursements and appropriations made on and after October 1, other than appropriations for incompleted improvements in process of construction, shall be charged against the current budget, and all funds actually received on and after October 1 shall be credited to the current budget. However, when the delay in presentation of any such claim is caused by a wilful act of a member of the board of supervisors or other official of the county, such supervisor or other official shall be liable on his official bond, to the claimant thereof, for the amount of same. In the administration of the Homestead Exemption Law of 1946, however, the time shall be extended to October 20 following the close of the fiscal year, for both the payment of claims and the accounting of revenue, belonging to and/or accruing to the immediately prior fiscal year.

SOURCES: Codes, 1942, § 9118-12; Laws, 1950, ch. 247, § 12; Laws, 1954, ch. 319, § 2; Laws, 1954 Ex Sess ch. 36, § 1.

Cross References — Municipal budgets, see § 21-35-23.
Homestead Exemption Law of 1946, see §§ 27-33-1 et seq.

§ 19-11-27. Certain expenditures for last year of term limited.

No board of supervisors of any county shall expend from, or contract an obligation against, the budget estimates for road and bridge construction, maintenance and equipment, made and published by it during the last year of the term of office of such board, between the first day of October and the first day of the following January, a sum exceeding one-fourth (¼) of such item of the budget made and published by it, except in cases of emergency. The clerk of any county is prohibited from issuing any warrant contrary to the provisions of this section. No board of supervisors nor any member thereof shall buy any machinery or equipment in the last six (6) months of their or his term unless or until he has been elected at the general election of that year. The provisions of this section shall not apply to a contract, lease or lease-purchase contract executed pursuant to the bidding requirements in Section 31-7-13 and approved by a unanimous vote of the board. Such unanimous vote shall include a statement indicating the board's proclamation that the award of the contract is essential to the efficiency and economy of the operation of the county government.

SOURCES: Codes, 1930, § 3977; 1942, § 9118-15; Laws, 1924, ch. 216; Laws, 1950, ch. 247, § 15; Laws, 1984, ch. 480, § 1; Laws, 2000, ch. 428, § 1; Laws, 2003, ch. 539, § 1, eff from and after July 1, 2003.

Cross References — Municipal budgets, see § 21-35-27.

Inapplicability of the prohibitions and restrictions set forth in this section to a contract, lease, or lease-purchase agreement entered pursuant to the requirements of §§ 31-7-1 et seq., dealing with public purchases, see § 31-7-13.

Exemption of contract, lease, or lease-purchase agreements from prohibitions and restrictions, see § 31-7-13.

JUDICIAL DECISIONS

1. In general.

No personal liability exists against members of a board of supervisors or its treasurer for violations of § 19-11-27 where no corruption is charged and the money was spent for objects authorized by law. Entrican v. King, 289 So. 2d 913 (Miss. 1974).

This section [Code 1942, § 9118-15] was enacted to prevent the depletion of the road funds by outgoing members of the board of supervisors during the last few months of their terms of office. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

The board of supervisors have a right under the statute to adopt separate budget items for road maintenance in each of the supervisors' districts, and to fix the amount that might be lawfully expended for the construction and maintenance of the public roads in each district during the fiscal year. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

Where materials furnished and labor performed in construction and maintenance of public roads of supervisor's district during the last month of the term of office of the outgoing members of the board of supervisors was in excess of the limitation imposed by the county budget law, the obligation was not enforceable. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

ATTORNEY GENERAL OPINIONS

The provisions of Section 19-11-27 shall not apply to a contract, lease or lease-purchase contract entered into pursuant to section 31-7-13. Gex, May 24, 1995, A.G. Op. #95-0256.

Expenditure of gaming funds for road and bridge construction is subject to the limitation of 19-11-27 that the board, during the last three months of the last year of their term, shall not expend or authorize the expenditure of more than 25% of that item of the budget, except contracts, leases or lease-purchase agreements entered into pursuant to Section 31-7-13. Gex, May 24, 1995, A.G. Op. #95-0256.

With the sole exception of supervisors and contracts falling within the provisions of this section, the prohibitions of §§ 19-11-27, 65-7-95 and 23-15-881 apply to supervisors who are unopposed in the primaries and general elections. Trapp, May 7, 1999, A.G. Op. #99-0220.

This section does not prohibit a board of supervisors from entering into an agreement for a loan under the local governments capital improvements revolving loan program provided by §§ 57-1-301 et seq. at any time during the last year of their terms of office. Lamar, July 30, 1999, A.G. Op. #99-0368.

CHAPTER 13

Contracts, Claims and Transaction of Business with Counties

In General 19-13-1
Selling Personal Property to, or Doing Repair Work, for Counties [Repealed]
Contracts for Printing, Stationery and Office Supplies 19-13-101

IN GENERAL

Sec.

19-13-1 through 19-13-7. Repealed
19-13-9. Repealed.
19-13-11. Contracts not to be made in vacation; approval.
19-13-13. Repealed.
19-13-15. Payment for work not to be made until inspection; partial payments.
19-13-17. Purchase of road equipment.
19-13-19. Purchase of surplus road equipment from federal agencies.
19-13-21. Repairs of road equipment.
19-13-23. Presentation of claims against county for allowance.
19-13-25. Itemization of claims for sales of personal property.
19-13-27. Docket of claims.
19-13-29. Duties of clerk in receiving, filing and paying claims.
19-13-31. Disposition of claims.
19-13-33. Certain allowances unlawful.
19-13-35. Penalty for unauthorized appropriations.
19-13-37. Repealed.
19-13-39. How member may avoid liability.
19-13-41. Supervisors to furnish printed blank warrants.
19-13-43. Warrants; assignment thereof.
19-13-45. Registration and payment of warrants.
19-13-47. Oath required.
19-13-49. Claims for livestock killed or injured in dipping process.
19-13-51. Defective bridges, causeways, and culverts; damages allowable for injury suffered therefrom.
19-13-53. Defective bridges, causeways, and culverts-presentation of claims.
19-13-55. Defective bridges, causeways, and culverts; payment of claims.

§§ 19-13-1 through 19-13-7. Repealed.

Repealed by Laws of 1983, ch. 469, § 10, eff from and after July 1, 1983.

§ 19-13-1. [Codes, 1871, § 1392; 1880, § 2181; 1892, § 343; 1906, § 364; Hemingway's 1917, § 3737; 1930, § 242; 1942, § 2920]

§ 19-3-3. [Codes, 1930, § 243; 1942, § 2921; Laws, 1924, ch. 234; Laws, 1972, ch. 452, § 1]

§ 19-13-5. [Codes, 1930, § 244; 1942, § 2922; Laws, 1924, ch. 234]

§ 19-13-7. [Codes, 1930, § 245; 1942, § 2923; Laws, 1924, ch. 234]

Editor's Note — Former § 19-13-1 prohibited supervisors from having an interest in county contracts.

Former § 19-13-3 related to contracts for truck hire.

Former § 19-13-5 prohibited supervisors from furnishing of teams or road machinery to work on bridges or roads.

Former § 19-13-7 related to penalties for violations of §§ 19-3-3 or 19-3-5.

§ 19-13-9. Repealed.

Repealed by Laws of 1995, ch. 311, § 1, eff from and after July 1, 1995.

[Codes, 1871, § 1388; 1880, §§ 2179, 2180; 1892, §§ 340,341; 1906, §§ 361, 362; Hemingway's 1917, §§ 3734, 3735;1930, §§ 239, 240; 1942, §§ 2917, 2918; Laws, 1904, ch. 141; Laws, 1975, ch. 343; Laws, 1986, ch. 489, § 12]

Editor's Note — Former § 19-13-9 related to notice and awarding of contracts for public works.

§ 19-13-11. Contracts not to be made in vacation; approval.

A board of supervisors shall not empower or authorize any one or more members of such board, or other person, to let or make contract for the building or erection of public works of any description, or for working public roads, in vacation or during a recess of said board, except as provided in Title 65 of the Mississippi Code of 1972 in cases of emergency when a bridge or road has been or is about to be damaged by floods or otherwise, and in other special cases. All other contracts shall be made and approved by said board in open session, and it shall be the duty of the board of supervisors to accept the lowest responsible bid for the erection or construction of all public buildings, bridges or public works, or for the execution of any other contract. Any bidder will be deemed responsible who will enter into bond, with sufficient sureties, according to law, to be approved by said board, in double the amount of the bids made by such bidder for the prompt, proper and efficient performance of his contract. All contracts made in violation of any of the provisions of law shall be void.

SOURCES: Codes, 1871, § 1394; 1880, § 2183; 1892, § 344; 1906, § 369; Hemingway's 1917, § 3742; 1930, § 246; 1942, § 2924.

Cross References — Requirement that officer have authority of board of supervisors before entering into contract, see § 25-1-43.

Contracts for construction and maintenance of public roads and bridges, see § 65-7-107.

JUDICIAL DECISIONS

1. In general.
2. Validity of contracts.

1. In general.

Persons dealing with the board of supervisors of the county must see that their contracts are legal. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

The manifest purpose of the statute [Code 1942, § 2924] is to safeguard public contracts, and to secure competitive bids from parties interested, to secure to the public fair contracts, and the advantages of competition. Bigham v. Lee County, 184 Miss. 138, 185 So. 818 (1939).

A county is not liable for public work done under the authority of a single member of the board, for under this section [Code 1942, § 2924] all contracts for such work must be made by the board as a board in open session and be evidenced by entries on its minutes. Groton Bridge & Mfg. Co. v. Board of Supvrs., 80 Miss. 214, 31 So. 711 (1902).

2. Validity of contracts.

Where the statute required the approval of the county board of supervisors of construction contracts entered into by a county port commission, neither the port commission nor the county would be liable for the payment of the cost of contract changes and additions which had not been approved by the supervisors in the manner required by law. Warren County Port Comm'n v. Farrell Constr. Co., 395 F.2d 901 (5th Cir. 1968).

Where materials furnished and labor performed in construction and maintenance of public roads of supervisors' district during the last month of the term of office of the outgoing members of the board of supervisors were in excess of the limitation imposed by the county budget law, the obligation was not enforceable. Board of Supvrs. v. Parks, 220 Miss. 403, 71 So. 2d 197 (1954).

Advertisement stating that county would receive bids for road machinery, for two weeks in two issues of newspaper only, was a violation of statute requiring three weeks' advertisement, and under the provision of this section [Code 1942, § 2924] declaring all contracts made in violation of law void, the contract for such road machinery was void. Merchants' Bank & Trust Co. v. Scott County, 165 Miss. 91, 145 So. 908 (1933).

Order of board of supervisors reciting due advertisement for bids for road machinery and acceptance of bids held not to estop county, or officers thereof, from asserting noncompliance with statute requiring legal advertisement which rendered contract unenforceable. Merchants' Bank & Trust Co. v. Scott County, 165 Miss. 91, 145 So. 908 (1933).

Road work contract held void, where minutes of board of supervisors did not show adjudication that advertisement for bids was properly made. Russell v. Copiah County, 153 Miss. 459, 121 So. 133 (1929).

Where specifications of contract for sea wall were changed before completion of advertisement for bids, contract subsequently entered into was void. Board of Supvrs. v. Cooper, 147 Miss. 57, 112 So. 682 (1927).

A contract for the working of county roads is not void merely because it does not refer to the provisions of Code 1906, § 4470. Jefferson Davis County v. Burkett, 109 Miss. 436, 69 So. 221 (1915).

By this section [Code 1942, § 2924] all contracts made by the board of supervisors in violation of any of the provisions of the law shall be void. State v. Vice, 71 Miss. 912, 15 So. 129 (1894).

RESEARCH REFERENCES

ALR. Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 A.L.R.5th 747.

§ 19-13-13. Repealed.

Repealed by Laws of 1995, ch. 311, § 1, eff from and after July 1, 1995. [Codes, 1942, § 2917.5; Laws, 1968, ch. 301, §§ 1, 2]

Editor's Note — Former § 19-13-13 related to awarding and payment of contracts for truck hire.

§ 19-13-15. Payment for work not to be made until inspection; partial payments.

[For contracts executed prior to July 1, 1984, the following provisions apply:]

The board of supervisors shall never make a payment to any contractor for building or repairing a bridge, or for doing any work on a public road, public building or other public work, where the contract price exceeds Two Hundred Dollars ($200.00) but is less than One Thousand Dollars ($1,000.00), without first having the same inspected and accepted by a committee, and having the certificate of the committee, under oath filed and entered on the minutes of the board. Such committee shall be appointed by the board of supervisors for that purpose and shall consist of at least two (2) members of the board of other districts than the one in which the work is done. The board shall not be bound by the acceptance of the committee, and shall never pay for the work in such cases until the specifications therefor are complied with and the work completed. In all cases of public work let by the board of supervisors where the contract price exceeds One Thousand Dollars ($1,000.00), the board may contract so as to provide for making partial payments to the contractor therefor as the work progresses. In no case shall the retained amount of such partial payments be less than two and one-half percent (2 ½ %) nor more than ten percent (10%) of the value of the work done and material used in the performance of the contracts, such value to be estimated by some competent person employed by the board to superintend such work, and not until the superintendent shall furnish to the board such estimate, in writing, on his oath as to the correctness of such estimate, which estimate, with the oath annexed thereto, shall be filed with and recorded in the minutes of the board; provided, however, the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the board of supervisors from the prime contractors. Before such person employed by the board shall enter upon the discharge of the duty of supervising such work, and before he shall furnish any estimate as to the value of the work done, he shall enter into bond in such penalty as may be fixed by the board, with sufficient sureties, to be approved by the board, and conditioned for the faithful performance of his duties as superintendent of such work, which bond shall be filed and preserved by the board, and shall be liable to suit thereon in the name of the county, for any misfeasance or malfeasance on the part of such superintendent touching the performance of his duties. The board shall not be bound by the estimate of such superintendent, nor shall the making of any partial payments on any public work, as above provided, be construed as an acceptance of the work and materials so inspected by such superintendent. The board shall not make the final payment on any such works or building without first having the same inspected as a whole and accepted by a committee of the board, as hereinbefore provided, and until the specifications are complied with and the work completed.

[For contracts executed on or after July 1, 1984, the following provisions apply:]

(1) The board of supervisors shall never make a payment to any contractor for building or repairing a bridge, or for doing any work on a public road, public building or other public work, where the contract price exceeds Two Hundred Dollars ($200.00) but is less than One Thousand Dollars ($1,000.00), without first having the same inspected and accepted by a committee, and having the certificate of the committee, under oath filed and entered on the minutes of the board. Such committee shall be appointed by the board of supervisors for that purpose and shall consist of at least two (2) members of the board of other districts than the one in which the work is done. The board shall not be bound by the acceptance of the committee, and shall never pay for the work in such cases until the specifications therefor are complied with and the work completed. In all cases of public work let by the board of supervisors where the contract price exceeds One Thousand Dollars ($1,000.00), the board may contract so as to provide for making partial payments to the contractor therefor as the work progresses. In no case shall the retained amount of such partial payments be less than two and one-half percent (2 ½%) nor more than ten percent (10%) of the value of the work done and material used in the performance of the contracts, such value to be estimated by some competent person employed by the board to superintend such work, and not until the superintendent shall furnish to the board such estimate, in writing, on his oath as to the correctness of such estimate, which estimate, with the oath annexed thereto, shall be filed with and recorded in the minutes of the board; provided, however, the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the board of supervisors from the prime contractors. Before such person employed by the board shall enter upon the discharge of the duty of supervising such work, and before he shall furnish any estimate as to the value of the work done, he shall enter into bond in such penalty as may be fixed by the board, with sufficient sureties, to be approved by the board, and conditioned for the faithful performance of his duties as superintendent of such work, which bond shall be filed and preserved by the board, and shall be liable to suit thereon in the name of the county, for any misfeasance or malfeasance on the part of such superintendent touching the performance of his duties. The board shall not be bound by the estimate of such superintendent, nor shall the making of any partial payments on any public work, as above provided, be construed as an acceptance of the work and materials so inspected by such superintendent. The board shall not make the final payment on any such works or building without first having the same inspected as a whole and accepted by a committee of the board, as hereinbefore provided, and until the specifications are complied with and the work completed.

(2) The board of supervisors may make partial payments for the work done and materials used in performance of all contracts for public buildings and public works upon certification in writing to the board by the architect or engineer on the project; and on all such contracts for work done and materials used in performance of said contracts a percentage of not less than

two and one-half percent (2 ½%) of each estimate thereon paid shall be retained until final acceptance of such project.

(3) On any contract as described in this section, except for a contract for building or repairing a bridge or doing any work on a public road, of which the total amount is Seven Hundred Fifty Thousand Dollars ($750,000.00) or greater, ten percent (10%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's and/or engineer's opinion. At such time fifty percent (50%) of that retainage shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers who are on schedule and performing satisfactorily, in the opinion of the prime contractor. Thereafter, a five percent (5%) retainage shall be withheld.

SOURCES: Codes, 1892, § 342; Laws, 1906, § 363; Hemingway's 1917, § 3736; Laws, 1930, § 241; Laws, 1942, § 2919; Laws, 1904, ch. 141; Laws, 1924 ch. 237; Laws, 1968 ch. 289, § 1; Laws, 1976, ch. 450, § 1; Laws, 1979, ch. 454, § 2; Laws, 1984, ch. 406, § 2, eff from and after July 1, 1984, and shall apply only to contracts executed on or after July 1, 1984.

Editor's Note — Laws, 1984, ch. 406, § 3 provides as follows:

"SECTION 3. This act shall take effect and be in force from and after July 1, 1984, and shall apply only to contracts executed on or after July 1, 1984."

Cross References — Inspection of roads, bridges, and ferries, see § 65-7-117.

Payment of road contractors, see § 65-19-41.

Final settlement with engineer supervising road construction, see § 65-19-45.

Prohibition against payment where there have been bidding irregularities, see § 75-21-17.

JUDICIAL DECISIONS

1. Inspection and approval.
2. Payment.

1. Inspection and approval.

Furnishing of machinery to county is not "public work" within this section [Code 1942, § 2919]. People's Bank v. Attala County, 156 Miss. 560, 126 So. 192 (1930).

A case in which inspection and compensation therefor by the board of supervisors is determined with reference to road contracts. State v. Wilson, 96 Miss. 788, 51 So. 715 (1910).

One who contracts with a county for public work cannot, after completing the work, although his claim exceeds $200, mandamus the board of supervisors to have the work inspected and approved under the provisions of this section [Code 1942, § 2919]. Young v. Leflore County, 81 Miss. 466, 33 So. 410 (1903).

This section [Code 1942, § 2919] is alone for the security of the county and does not affect the right of contractors for public works. Young v. Leflore County, 81 Miss. 466, 33 So. 410 (1903).

2. Payment.

In contemplation of plans to establish a park or golf course a district supervisor failed to comply with § 19-13-15 where there was no evidence of an inspection committee or any written certification filed with the Board of Supervisors. Cumbest v. State, 456 So. 2d 209 (Miss. 1984).

Surety company having paid materialmen's and laborers' claims is entitled to right of subrogation to funds retained by county until completion of contract, as against subsequent assignment made by contractor. Canton Exch. Bank v. Yazoo County, 144 Miss. 579, 109 So. 1 (1926).

The statute prohibiting payment by installments for public work does not apply to a contract for the construction and continuous repair of the roads of the county. Jefferson Davis County v. Burkett, 109 Miss. 436, 69 So. 221 (1915).

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts §§ 83, 102.

§ 19-13-17. Purchase of road equipment.

[With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

A board of supervisors purchasing tractors, trucks and other machinery or equipment for constructing, reconstructing and maintaining the public roads shall not pay, or agree or contract to pay, more therefor than the then prevailing manufacturer's retail list price at the factory, plus freight and sales tax, any federal excise tax, and a reasonable service and assembly charge. The board may provide for the payment of all or any portion of such price over the useful life of the property as determined according to the most recent asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines; provided, however, that no installment contract described in this sentence may be executed by the board during the last year of the board's term of office. All such deferred payments shall be represented by notes of the county, or a separate road district or supervisors district thereof, as the case may be, to be dated at or after the time of delivery of the machinery, bearing interest at a rate not exceeding that allowed in Section 75-17-105, from date until paid, and payable to the seller of the machinery, or the purchaser of the notes, out of the road fund of the county or district. All such notes for any purchase shall be payable on the fifteenth day of June or the fifteenth day of December, the first to be payable not more than one (1) year after date. Said notes shall be signed by the president of the board, and countersigned by the clerk thereof, under the seal of the county. Said notes may be validated in the manner provided by law, and may be delivered to the seller of the machinery, or to any person who will purchase the same at a lower rate of interest than said seller is willing to accept, or at a like rate of interest plus a premium, any money received from a sale of such notes to be applied to the payment of the balance due on said machinery, and any surplus to be paid into the road fund of the county or district, as the case may be. On the first business day of each month in which any such note matures, the clerk shall docket the principal amount of such note, with interest thereon to maturity, as a claim against the county, in favor of the last known holder of such note, and the board shall allow the same at its regular meeting held that month without further presentation, proof or demand, to be paid as other claims in its proper order.

In all advertisements for bids for road machinery or equipment under this section, the board of supervisors shall insert in such advertisements a statement as to whether or not the road machinery or equipment purchased is to be paid for in cash, or is to be purchased upon installment payments as authorized herein. All indebtedness incurred under the provisions hereof may be incurred by the board without the necessity of calling an election thereon, receiving a petition therefor, or giving notice of the intention of the board to incur such indebtedness. However, no indebtedness shall be hereafter incurred under the provisions of this section which, when added to the amount of notes incurred hereunder which are then outstanding shall require the use in the retirement of such notes in any one (1) year of more than fifty percent (50%) of the amount available to the county, separate road district, or supervisors district, as the case may be, for the maintenance of roads and bridges for the preceding fiscal year. The amount available for the maintenance of roads and bridges shall be deemed to be the sum of the amounts produced by the county's or district's share of the state gasoline and motor vehicle privilege license tax, less that amount required by law to be set aside for the payment of bonds, together with the amount produced by the road and/or bridge ad valorem tax levy for such county or district, as the case may be. Nothing herein, however, shall be construed to invalidate any indebtedness previously incurred and now outstanding.

When any county, separate road district, or supervisors district has heretofore incurred, or shall hereafter incur an indebtedness under the provisions of this section for the purchase of road machinery or equipment, it shall be the duty of the chancery clerk of such county to deduct each month from the distribution of the state gasoline tax which would otherwise be paid to such county or district (but not from the amount required by law to be set aside for the payment of bonds) a proportionate amount of the sum which will be due as the principal of and interest upon the next installment to be paid on such indebtedness, it being the intention of this section to provide that if the indebtedness be payable in semiannual installments then there shall be set aside each month out of said distribution of state gasoline tax one-sixth (1/6) of the amount which will be necessary to pay the principal of and any interest upon the next installment to become due, and that a like method of computation shall be followed in all cases in determining the amount to be so set aside. All amounts so deducted under the provisions of this section shall be kept in a separate fund of the county, separate road district, or supervisors district, as the case may be, and shall be expended for no other purpose than the payment of the principal and interest of said indebtedness until the same be paid. Should said separate fund so created not be sufficient for the payment of the next maturing installment of principal and interest when the same becomes due, there shall be transferred thereto from the road and bridge fund such amount as will make the separate fund sufficient for the purpose.

If any person, firm, corporation or association, or any agent or employee thereof, shall willfully claim and receive any amount from any county, separate road district, or supervisors district, as the purchase price of, or as any installment upon the purchase price of, any road machinery or equipment where the provisions of this section have not been complied with, or if any member of the board of supervisors shall knowingly vote for the payment of any unauthorized claim for the purchase price, or any installment upon the purchase price, of any road machinery or equipment, then such person, firm, corporation, association or member of the board of supervisors, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding double the amount of such unauthorized claim, or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

[With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

A board of supervisors purchasing tractors, trucks and other machinery or equipment for constructing, reconstructing and maintaining the public roads may provide for the payment of all or any portion of the price thereof over the useful life of the property as determined according to the most recent asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines; provided, however, that no installment contract described in this sentence may be executed by the board during the last year of the board's term of office. All such deferred payments shall be represented by notes of the county, to be dated at or after the time of delivery of the machinery, bearing interest at a rate not exceeding that allowed in Section 75-17-105, from date until paid, and payable to the seller of the machinery, or the purchaser of the notes, out of the road fund of the county. All such notes for any purchase shall be payable on June 15 or December 15, the first to be payable not more than one (1) year after date. Said notes shall be signed by the president of the board, and countersigned by the clerk thereof, under the seal of the county. Said notes may be validated in the manner provided by law, and may be delivered to the seller of the machinery, or to any person who will purchase the same at a lower rate of interest than said seller is willing to accept, or at a like rate of interest plus a premium, any money received from a sale of such notes to be applied to the payment of the balance due on said machinery, and any surplus to be paid into the road fund of the county. On the first business day of each month in which any such note matures, the clerk shall docket the principal amount of such note, with interest thereon to maturity, as a claim against the county, in favor of the last known holder of such note, and the board shall allow the same at its regular meeting held that month without further presentation, proof or demand, to be paid as other claims in its proper order.

In all advertisements for bids for road machinery or equipment under this section, the board of supervisors shall insert in such advertisements a statement as to whether or not the road machinery or equipment purchased is to be paid for in cash, or is to be purchased upon installment payments as authorized herein. All indebtedness incurred under the provisions hereof may be incurred by the board without the necessity of calling an election thereon, receiving a petition therefor, or giving notice of the intention of the board to incur such indebtedness. However, no indebtedness shall be hereafter incurred under the provisions of this section which, when added to the amount of notes incurred hereunder which are then outstanding shall require the use in the retirement of such notes in any one (1) year of more than fifty percent (50%) of the amount available to the county for the maintenance of roads and bridges for the preceding fiscal year. The amount available for the maintenance of roads and bridges shall be deemed to be the sum of the amounts produced by the county's share of the state gasoline and motor vehicle privilege license tax, less that amount required by law to be set aside for the payment of bonds, together with the amount produced by the road and/or bridge ad valorem tax levy for such county. Nothing herein, however, shall be construed to invalidate any indebtedness previously incurred and now outstanding.

When any county has heretofore incurred, or shall hereafter incur an indebtedness under the provisions of this section for the purchase of road machinery or equipment, it shall be the duty of the chancery clerk as county treasurer to pay the principal of and interest upon the indebtedness in semiannual installments from the road maintenance and bridge funds.

If any person, firm, corporation or association, or any agent or employee thereof, shall willfully claim and receive any amount from any county as the purchase price of, or as any installment upon the purchase price of, any road machinery or equipment where the provisions of this section have not been complied with, then such person, firm, corporation or association shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding double the amount of such unauthorized claim or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, §§ 2937, 2940-13; Laws, 1940, ch. 253; Laws, 1950, ch. 246 §§ 1, 5; Laws, 1962, ch. 247 § 3; Laws, 1981, ch. 462, § 2; Laws, 1982, ch. 434, § 4; Laws, 1983, ch. 494, § 9, amended ch. 541, § 8; Laws, 1988 Ex Sess, ch. 14, § 13; Laws, 1993, ch. 556, § 5; Laws, 1995 ch. 445, § 1, eff from and after passage (approved March 21, 1995).

Cross References — Purchase of surplus road equipment from federal government, see § 19-13-19.

Repair of road equipment, see § 19-13-21.

Prohibition against instalment buying, see § 65-7-97.

Rate of interest which the notes described in this section shall bear, see § 75-17-105.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A seller of road equipment to the county was not entitled to the statutory damages where an appeal by the county was unsuccessful in absence of a statute that would make the county liable for such damages. Covington County v. Mississippi Rd. Supply Co., 59 So. 2d 325 (Miss. 1952).

A county could not deny liability for the purchase price of road machinery purchased by it for a supervisor's district, on the ground that the supervisor's district became insolvent, where the county offered no proof to show that the obligations of the supervisor's district at date of purchase exceeded the anticipated revenue, but where the proof showed that the district had sufficient funds to have paid for the road machinery in question. Covington County v. Mississippi Rd. Supply Co., 213 Miss. 583, 57 So. 2d 318 (1952), corrected, 59 So. 2d 325 (Miss. 1952).

A county is in no position to contend after having used road machinery for approximately one year and a half, that it had then become secondhand machinery and that the machinery had become in a bad state of repair. Covington County v. Mississippi Rd. Supply Co., 213 Miss. 583, 57 So. 2d 318 (1952), corrected, 59 So. 2d 325 (Miss. 1952).

Issuance of a note by county to pay for road machinery was not invalid because the note was an attempt to create an interest bearing debt in violation of Code 1942 § 4320, as amended by ch. 473, Laws of 1946, because no election was held, inasmuch as the statute authorizing the purchase did not require election as condition precedent to issuance of interest bearing note for a purchase price. Covington County v. Mississippi Rd. Supply Co., 213 Miss. 583, 57 So. 2d 318 (1952), corrected, 59 So. 2d 325 (Miss. 1952).

ATTORNEY GENERAL OPINIONS

County may borrow money for purpose of paying balance due on lease-purchase contract for road equipment. Logan, July 15, 1992, A.G. Op. #92-0459.

The purchase of road equipment from monies in the county road fund is specifically authorized in Section 19-13-17 for counties operating either a unit or beat system of road administration. A county may not expend general fund monies for the purpose of maintaining or constructing county roads. See Section 27-39-303. Creekmore, April 26, 1996, A.G. Op. #96-0200.

A county board of supervisors may enter into a purchase contract for road equipment to be paid in installments over the useful life of the equipment even if the installments extend beyond their current term in office. Fortier, Apr. 5, 2002, A.G. Op. #02-0151.

Equipment for maintaining or constructing county roads may not be bought from general funds. Shelton, Aug. 6, 2004, A.G. Op. 04-0339.

RESEARCH REFERENCES

ALR. Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

§ 19-13-19. Purchase of surplus road equipment from federal agencies.

The authority is hereby granted to boards of supervisors to purchase tractors, trucks and other machinery or equipment for use of the county or any road district of any county in constructing, reconstructing and maintaining public roads from any agency of the federal government authorized to sell and dispose of surplus property.

Such purchases may be made without first having advertised for bidders and without competitive bids having first been submitted.

SOURCES: Codes, 1942, § 2940-01; Laws, 1946, ch. 476; Laws, 1956, ch. 182, §§ 1-3.

§ 19-13-21. Repairs of road equipment.

The board of supervisors of any county which owns any tractor, truck, or other road machinery or equipment, or any district of which owns any such machinery or equipment, may at any time have the same repaired, or purchase necessary repair parts therefor, where it is necessary to use the machinery or equipment in constructing, reconstructing or maintaining the public roads, whether or not there is then a sufficient amount in the fund out of which the cost thereof must be paid to pay the same. The claim for the repairs or repair parts shall be allowed in due course when filed, and be paid in its proper order as other claims. However, if any repairs herein permitted to be made after the first day of July of the last year of the term of office of the members of the board making such repairs shall exceed the sum of Five Thousand Dollars ($5,000.00), the repairs shall not be made unless and until the board of supervisors, or a majority of the members thereof, shall have authorized the making of the repairs at a regular meeting of the board, or a special meeting called for that purpose.

SOURCES: Codes, 1942, § 2939; Laws, 1940, ch. 253; Laws, 1950, ch. 246, § 2; Laws, 2003, ch. 539, § 2, eff from and after July 1, 2003.

JUDICIAL DECISIONS

1. In general.

In an action by mechanic's administrator for repairs made to road machinery of the county, where the repairs were necessary and the charges were reasonable, the administrator was entitled to the entire amount of his claim. Carroll County v. Shook, 216 Miss. 232, 62 So. 2d 311 (1953).

This section [Code 1942, § 2939] was intended to authorize the repair of road machinery owned by the county or any district thereof, and the employment "at any time" of the labor necessary for that purpose, and to purchase the repair parts needed therefor. Shook v. Carroll County, 210 Miss. 537, 49 So. 2d 897 (1951).

The amount charged by a repairman for labor done and performed and parts furnished and the repair of road machinery is subject to the approval of board of supervisors as to whether the charges are reasonable before the claim shall be made. Shook v. Carroll County, 210 Miss. 537, 49 So. 2d 897 (1951).

It is permissible under this section [Code 1942, § 2939] that a county or a supervisor's district which owns road machinery and equipment may have the same repaired by employing labor for that purpose, and the law does not require that the employment of labor for repair work on road machinery shall be on competitive bids, following the usual advertisement of an intention to have such property repaired for use, or forbid a contract with a repairman until at the next meeting of the board. Shook v. Carroll County, 210 Miss. 537, 49 So. 2d 897 (1951).

§ 19-13-23. Presentation of claims against county for allowance.

Any person having a just claim against any county shall first file the same on or before the last day of the month for which such claim may be payable, with the clerk of the board of supervisors for presentation to the board for allowance, which said claim shall be properly dated and itemized, and shall be accompanied by any evidence of performance or delivery as required by Section 19-13-25. The claimant may amend said claim at any time before final rejection or allowance, and may appear before the board and submit further evidence or argument in support thereof, having a continuance for either or both of said purposes if desired.

SOURCES: Codes, 1857, ch. 59, art. 34; 1871, § 1384; 1880, § 2175; 1892, § 292; 1906, § 311; Hemingway's 1917, § 3684; 1930, § 253; 1942 §§ 9118-07, 2932; Laws, 1932, ch. 179; Laws, 1940, ch. 253; Laws, 1950, ch. 244 § 1, ch. 247, § 7, eff from and after August 31, 1950.

Cross References — Appropriation of county funds generally, see §§ 19-3-59, 19-13-33, 19-13-35.

JUDICIAL DECISIONS

1. In general.

In a proceeding on a claim brought by a county supervisor against the board of supervisors, the supervisor, removed from office after he was convicted of an obstruction of justice, a felony, and later, after his conviction was reversed and he was acquitted of the charge, reinstated to his position, was entitled to his salary plus interest for the time in which he was removed from office. Wilkinson County Bd. of Supvrs. v. Jolliff, 230 So. 2d 61 (Miss. 1969), overruled on other grounds, Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

This section [Code 1942, § 2932] is applicable to a landowner's claim for damages from erosion caused by a county-constructed drainage ditch unrelated to any public road, through failure to maintain it and adding additional drainage. Dorsey v. Adams County, 246 Miss. 369, 149 So. 2d 493 (1963).

ATTORNEY GENERAL OPINIONS

There was no authority for county to reimburse former supervisor for his uninsured lost property when, after using supervisor's heavy equipment, including two plat clamps, for road work without any agreement, express or implied, as to payment of any kind, county returned the heavy equipment when no longer needed, but not the plate clamps which could not be located. Griffith, January 9, 1998, A.G. Op. #97-0766.

The chancery clerk must wait for the minutes (a) to be signed by the board president or the vice president, if the president is absent or disabled or (b) to be adopted and approved by the board of supervisors as the first order of business on the first day of the next monthly meeting of the board to have the authority to pay the claims. Crook, July 17, 2002, A.G. Op. #02-0297.

Even where minutes are approved by way of the board president's signature, the board as a whole may also review, ratify, and make corrections to the minutes at its next meeting in order to ensure that the minutes have been accurately recorded. Crook, July 17, 2002, A.G. Op. #02-0297.

In regard to a claim dated four years prior to its submission, a board of supervisors may pay the claim if it determines that there is a just claim stated against the county, that the county should pay such claim, and that the claim is not barred by an applicable statute of limitations. Dobbins, Nov. 14, 2003, A.G. Op. 03-0556.

RESEARCH REFERENCES

ALR. Limitation period as affected by requirement of notice or presentation of claim against governmental body. 3 A.L.R.2d 711.

Power of county or its officials to compromise claims. 15 A.L.R.2d 1359.

Local government tort liability: Minority as affecting notice of claim requirement. 58 A.L.R.4th 402.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 598 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 92 (claim or demand against county).

§ 19-13-25. Itemization of claims for sales of personal property.

All claims filed for allowance by a board of supervisors which are based upon a sale or sales of any personal property shall be sufficiently itemized to show in detail the kind, quantity and price of the articles sold. Claims covering the sale of lumber shall be itemized so as to show in detail the grade or grades thereof, the amount of each different size of lumber covered by said invoice or statement, together with the total number of feet of each different grade and size, and the price per thousand feet at which it is sold, stated separately for each different grade and size. Each itemized invoice or statement so filed shall be accompanied by either (1) a receipt, in like detail, properly dated, and signed by a public officer, agent or employee authorized to accept delivery of such property, or, (2) a bill of lading or shipping receipt issued by a common carrier making delivery of such property, the rules of which carrier require a receipt to be given by the consignee on delivery, or (3) an affidavit of the seller, his agent or employee, showing how, where, when, and to whom delivery of such property was made. Where an affidavit is filed as proof of delivery, if delivery was by mail, the affidavit must have attached thereto a post office registry or insurance receipt, and if delivery was made by car, truck, or other public or private conveyance or means, the affidavit must state the name and address of the party actually making the delivery, and the make and license number of any car or truck used therein, as well as the other matters above required. The person so mailing or making actual delivery of such property shall, for the purpose of making such affidavit only, be considered an agent or employee of the seller. It is expressly provided, however, that no claim not first filed with the clerk of the board of supervisors shall be allowed until the seller has filed such claim in accordance with the requirements of this section.

SOURCES: Codes, 1942, § 2933; Laws, 1940, ch. 253; Laws, 1950, ch. 244, § 2; Laws, 1973, ch. 365, § 1, eff from and after passage (approved March 23, 1973).

Cross References — Payment of claim which clerk has failed to enter on docket of claims, see § 19-13-27.

Consequences of disallowance of claim due to clerk's failure to keep docket of claims as required, see § 19-13-27.

Disposition of claims by board of supervisors, see §§ 19-13-31, 19-13-43.

ATTORNEY GENERAL OPINIONS

Whether or not Miss. Code Section 19-13-25 requires, as prerequisite to payment, that board of supervisors obtain statement from telephone company itemizing all local calls in addition to long distance calls depends on fact question as to circumstances surrounding claims at issue; county board of supervisors must, as trustees of public funds, and as expressly required by this section, reassure themselves that claim properly represents request for payment for services or products actually and lawfully provided to county rather than to some other party. Eaton, Apr. 28, 1993, A.G. Op. #93-0288.

§ 19-13-27. Docket of claims.

The clerk of the board of supervisors shall be supplied with, and shall keep as a record of his office, a book to be styled "The Docket of Claims," in which he shall enter monthly all demands, claims and accounts against the county presented to him during the month. The docket shall provide spaces for the name of the claimant, the number of the claim, the amount of the claim, and on what account. All demands, claims and accounts filed against the county shall be preserved by the clerk as a permanent record, and numbered to correspond with the warrants to be issued therefor, if allowed. Immediately upon being notified of any judgment being rendered against the county, the clerk shall docket the same as a claim for allowance and payment as provided by law. Any claimant who has filed a claim with the clerk of the board of supervisors in the manner provided in Section 19-13-25 whose said claim is not allowed because of the failure of such clerk to keep the docket of claims as herein required, shall be entitled to recover the amount of such claim from such clerk on his official bond. Failure of the clerk to keep the docket of claims as herein required shall render such clerk liable to the county in the amount of Five Hundred Dollars ($500.00), and the Auditor of Public Accounts, upon information to the effect that such claims docket has not been kept, shall proceed immediately against such clerk for the collection of said penalty.

SOURCES: Codes, 1892, § 321; 1906, § 342; Hemingway's 1917, § 3715; 1930, § 254; 1942, § 2934; Laws, 1938, ch. 317, 1940, chs. 253, 259; Laws, 1950, ch. 244, § 3; Laws, 1985, ch. 514, § 7, eff from and after October 1, 1985.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Duties of clerk in receiving, filing and paying claims, see §§ 19-13-23, 19-13-29.

Disposition of claims by board of supervisors and payment by clerk, see §§ 19-13-31, 19-13-43.

Claims docket kept by municipalities, see § 21-39-7.

§ 19-13-29. Duties of clerk in receiving, filing and paying claims.

When claims against the county shall be presented to the clerk thereof, said clerk shall mark "filed" on each such claim, as of the date of presentation of same, and shall audit, number, and docket the same consecutively under the heading of each fund in the book of accounts required by Section 19-11-13 out of which the same shall be paid. The said clerk shall file the claims in like manner, and shall safely preserve the same as records of his office. Each year's records shall be kept separate and begin with a new number for each year, and thence run in regular order for that year.

In issuing any warrant under order of the board of supervisors to pay any one of said claims so numbered and kept, said clerk shall enter the number of the claim and designate the fund against which allowed in the body of the warrant so that the claim may be easily found and identified, and so that possible duplication may be avoided.

For failure to perform any duty required of him herein, said clerk shall not be entitled to the compensation now provided by law for such duty, when performed, and the board of supervisors shall be prohibited from authorizing payment of the same to said clerk, but, instead, said board shall be authorized to employ a competent person to perform any duty which such clerk has failed to perform, either in his capacity as the clerk of the board or as the county auditor, and pay to such person the compensation now provided by law for such services, as aforesaid.

Any claim filed with the clerk on or before the last working day in the month prior to the next regular meeting of the board of supervisors at which claims are considered pursuant to Section 19-13-31 shall be so docketed as to be considered by the board of supervisors at such meeting.

SOURCES: Codes, 1942, § 9118-07; Laws, 1950, ch. 247, § 7; Laws, 1986, ch. 489, § 9, eff from and after passage (approved April 15, 1986).

Cross References — Presentation of claims against county for allowance, see § 19-13-23.

Claims warrants, see § 19-13-43.

Relationship between this section and certain general provisions relative to timely payment of invoices for goods and services sold to public bodies, see § 31-7-305.

JUDICIAL DECISIONS

1. In general.

A county board of supervisors' refusal to reinstate the chancery clerk to the positions of clerk of the board of supervisors and county auditor exceeded the board's limited grant of authority under § 19-3-29, which authorizes the board to appoint a clerk pro tempore, where the chancery clerk had merely intended to temporarily vacate those positions and there were no findings that the chancery clerk failed to perform any duty required of him so as to justify the board's refusal to comply with his request for reinstatement. Barlow v. Weathersby, 597 So. 2d 1288 (Miss. 1992).

ATTORNEY GENERAL OPINIONS

President of board of supervisors must check all of claims on claims docket and evidence by his signature that he/she has checked these claims and that they appear to be in order at least once month and before meeting at which claims are considered; president does not have to sign ledger claims on daily basis or as often as claims are entered on claims docket; it is sufficient if he/she signs claims docket once month before meeting at which claims are considered. Barry Sept. 22, 1993, A.G. Op. #93-0519.

§ 19-13-31. Disposition of claims.

(1) At each regular meeting of the board, the claims docket shall be called and all claims then on file, not previously rejected or allowed, shall be passed upon in the order in which they are entered upon the docket. All claims found by the board to be illegal, and which cannot be made legal by amendment, shall be rejected or disallowed. All other claims shall be audited, and all those found proper upon due proof shall be allowed in the order in which they appear on the docket, whether or not there shall then be sufficient money in the several funds on which warrants must be drawn for their payment. Those claims as to which a continuance is requested by the claimant, and those found to be defective but which might be perfected by amendment shall be continued. When any claim is allowed by the board, it shall see that the claims docket correctly specifies the name of the claimant, the number of the claim, the amount allowed, and on what account. The president, or the vice president in the absence or disability of the president, of the board of supervisors shall check the claims docket at the close of each day's business and shall verify the correctness of all docket entries made during the day. He shall sign his name at the end of the docket entries covering the day's business, but it shall not be necessary that he sign the claims docket under each claim allowed or otherwise disposed of. The board shall enter an order on its minutes approving the demands and accounts allowed, but it shall only be necessary to refer to such demands and accounts by the numbers as they appear on the claims docket.

If the board shall reject any such claim in whole or in part, or refuse, when requested at a proper time, to pass finally thereon, the claimant may appeal to the circuit court, or may bring suit against the county on such claim. In either case, if the claimant recovers judgment and notifies the clerk of the board of supervisors, and if no appeal be taken to the Supreme Court, the board shall allow the same, and a warrant shall be issued therefor.

If the terms of the invoice provide a discount for payment in less than forty-five (45) days, boards of supervisors shall preferentially process it and use all diligence to obtain the savings by compliance with the invoice terms, if it would be cost effective.

In processing claims of vendors the board of supervisors shall be subject to the provisions of Sections 31-7-301, 31-7-305, 31-7-309, 31-7-311 and 31-7-313.

(2) Notwithstanding the provisions of this section to the contrary, the chancery clerk may be authorized by an order of the board of supervisors entered upon its minutes, to issue pay certificates against the legal and proper fund for the salaries of officials and employees of the county or any department, office or official thereof without prior approval by the board of supervisors as required by this section for other claims, provided the amount of the salary has been previously entered upon the minutes by an order of the board of supervisors, or by inclusion in the current fiscal year budget and provided the payment thereof is otherwise in conformity with law and is the proper amount of a salaried employee and for hourly employees for the number of hours worked at the hourly rate approved on the minutes.

SOURCES: Codes, 1857, ch. 59, arts. 32, 34; 1871, §§ 1381, 1384; 1880, §§ 2159, 2175; 1892, §§ 292, 320; 1906, §§ 311, 341; Hemingway's 1917, §§ 3684, 3714; 1930, §§ 253, 255; 1942, §§ 2932, 2935; Laws, 1932, chs. 179, 202; Laws, 1938, ch. 317; Laws, 1940, ch. 253; Laws, 1950, ch. 244, §§ 1, 4; Laws, 1959 Ex Sess, ch. 22, § 7; Laws, 1986, ch. 489, § 10; Laws, 1989, ch. 358, § 1, eff from and after passage (approved March 12, 1989).

Cross References — Delivery of list of allowances against county treasury by clerk of circuit court, see § 9-7-129.

Duties of clerk in receiving, filing and paying claims, see § 19-13-29.

Provision that claims filed with the clerk before the last working day of the month prior to the next regular meeting of the board of supervisors at which claims are considered pursuant to this section shall be docketed so as to be considered by the board at such meeting, see § 19-13-29.

Disposition of claims against municipalities, see §§ 21-39-9, 21-39-11.

Payment of fees to the Supreme Court, see § 25-7-7.

Provision that district attorney is to pass on public accounts allowed by circuit court, see § 25-31-15.

Claims of persons who have cared for paupers, see § 43-31-13.

JUDICIAL DECISIONS

1. In general.

In a proceeding on a claim brought by a county supervisor against the board of supervisors, the supervisor, removed from office after he was convicted of an obstruction of justice, a felony, and later, after his conviction was reversed and he was acquitted of the charge, reinstated to his position, was entitled to his salary plus interest for the time in which he was removed from office. Wilkinson County Bd. of Supvrs. v. Jolliff, 230 So. 2d 61 (Miss. 1969), overruled on other grounds, Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

This section [Code 1942, § 2932] is applicable to a landowner's claim for damages from erosion caused by a county-constructed drainage ditch unrelated to any public road, through failure to maintain it and adding additional drainage. Dorsey v. Adams County, 246 Miss. 369, 149 So. 2d 493 (1963).

ATTORNEY GENERAL OPINIONS

Salaries and wages of county officials and employees must be included for record keeping purposes in claims docket listings and in monthly publication of expenses, because these expenditures are made out of county funds every month; board does not have to list individual salaries or wages of officials and employees in claims docket listings or in publication of proceedings, but can list total amount paid in salaries and wages. Montgomery, March 20, 1990, A.G. Op. #90-0174.

Supervisors incur individual liability for unlawful expenditures pursuant to Section 31-7-57 even if president signed claims docket as required by Section 19-13-31; supervisors do not incur individual liability under Section 31-7-57 for lawful expenditures even if president failed to sign claims docket. Barry Sept. 22, 1993, A.G. Op. #93-0519.

Based on Section 19-13-31, the chancery court has no authority to approve claims against the county that have been rejected by the board. Griffin, November 22, 1996, A.G. Op. #96-0775.

A court reporter is required, unless waived, for child support cases filed by the Department of Human Services, and such court reporters are to paid an annual salary provided by the several counties of each respective court district. Dennis, January 29, 1999, A.G. Op. #98-0799.

The chancery clerk must wait for the minutes (a) to be signed by the board president or the vice president, if the president is absent or disabled or (b) to be adopted and approved by the board of supervisors as the first order of business on the first day of the next monthly meeting of the board to have the authority to pay the claims. Crook, July 17, 2002, A.G. Op. #02-0297.

Even where minutes are approved by way of the board president's signature, the board as a whole may also review, ratify, and make corrections to the minutes at its next meeting in order to ensure that the minutes have been accurately recorded. Crook, July 17, 2002, A.G. Op. #02-0297.

In regard to a claim dated four years prior to its submission, a board of supervisors may pay the claim if it determines that there is a just claim stated against the county, that the county should pay such claim, and that the claim is not barred by an applicable statute of limitations. Dobbins, Nov. 14, 2003, A.G. Op. 03-0556.

RESEARCH REFERENCES

ALR. Limitation period as affected by requirement of notice or presentation of claim against governmental body. 3 A.L.R.2d 711.

Power of county or its officials to compromise claims. 15 A.L.R.2d 1359.

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Forms 115-117 (complaint, petition, or declaration against county).

20 Am. Jur. Pl & Pr Forms (Rev), Public Works and Contracts, Form 39 (petition or application by contractor for writ of mandamus to compel issuance of warrant for progress payment due under county contract).

§ 19-13-33. Certain allowances unlawful.

It shall be unlawful for the board of supervisors to allow a greater sum for any account, claim, or demand against the county than the amount actually due thereon, dollar for dollar, according to the legal or ordinary cash compensation for such services rendered, or for salaries or fees of officers, or for materials furnished, or to issue county warrants or orders upon such accounts, claims or demands, when allowed for more than the actual amount so allowed, dollar for dollar. Any illegal allowance by such board may be inquired into by the proper tribunal, upon legal proceedings for that purpose, whenever such matter may come into question in any case.

SOURCES: Codes, 1871, § 1382; 1880, § 2160; 1892, § 322; 1906, § 343; Hemingway's 1917, § 3716; 1930, § 257; 1942, § 2942.

Cross References — Removal of public officers from office, see §§ 25-1-59, 25-5-1.

JUDICIAL DECISIONS

1. In general.

Where supervisors awarded lumber dealer, as lowest bidder, contract for lumber for year, and in violation of contract purchased lumber from others, dealer's suit for unliquidated damages for breach of contract held not maintainable. Board of Supvrs. v. Payne, 175 Miss. 12, 166 So. 332 (1936).

This statute [Code 1942, § 2942] is a limitation of the rule that the judgment of the board making an allowance cannot be collaterally impeached. Howe v. State, 53 Miss. 57 (1876), but see Harrison County v. Gulfport, 557 So. 2d 780 (Miss. 1990).

§ 19-13-35. Penalty for unauthorized appropriations.

If any person shall claim and receive from the board of supervisors of a county any fee or compensation not authorized by law, or if a member of such board shall knowingly vote for the payment of any such unauthorized claim, or any appropriation not authorized by law, he shall be subject to indictment, and, on conviction, be fined not exceeding double the amount of such unlawful charge, or may be imprisoned in the county jail not more than three months, or be subject to both such fine and imprisonment.

SOURCES: Codes, 1871, § 1379; 1880, § 2161; 1892, § 323; 1906, § 344; Hemingway's 1917, § 3717; 1930, § 258; 1942, § 2943.

Cross References — Authority of grand jury to examine records of county officers, see § 13-5-57.

Limitation on expenditure of funds, see § 19-11-15.

Penalty for non-compliance with law governing purchase of stationery and printing, see § 19-13-119.

Penalty for unauthorized appropriations by officers of a municipality, see § 21-39-15.

Provision prohibiting officer from entering into contract without special authority, see § 25-1-43.

Removal of public officer from office, see §§ 25-1-59, 25-5-1.

JUDICIAL DECISIONS

1. In general.

A statute imposing personal liability upon municipal officers is highly penal in nature, and accordingly must be restricted to its terms. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

This section [Code 1942, § 2943] applies to members of board of supervisors who act fraudulently, corruptly or in bad faith. Pegram v. State, 121 Miss. 564, 83 So. 741 (1920).

Where a member of the board of supervisors in good faith believing that the board had power to pay a claim to a contractor for working the road he is not liable criminally because in so acting he is acting judicially. Pegram v. State, 121 Miss. 564, 83 So. 741 (1920).

ATTORNEY GENERAL OPINIONS

Section 19-13-35 prohibits the board of supervisors from making any unauthorized payment. Thus the County Board of Supervisors may not expend county tax monies to relocate gas lines for the district. Walters, August 16, 1996, A.G. Op. #96-0515.

§ 19-13-37. Repealed.

Repealed by Laws of 1988 Ex Sess, ch. 14 § 74, eff from and after passage (approved August 16, 1988).

[Codes, 1871, § 1386; 1880, § 2177; 1892, § 325; 1906, § 346; Hemingway's 1917, § 3719; 1930, § 259; 1942, § 2944; Laws, 1974, ch. 444, §§ 1-3]

Editor's Note — Former § 19-13-37 related to actions against supervisors for unauthorized appropriations. For current penalties for violating provisions regulating the public purchase of commodities, see § 31-7-55.

§ 19-13-39. How member may avoid liability.

Any member of the board of supervisors may have his vote, on any question before the board, recorded on the minutes of the board at the time of such vote, and a member who voted against any unauthorized appropriation of money shall not be liable therefor.

SOURCES: Codes, 1871, § 1387; 1880, § 2178; 1892, § 319; 1906, § 340; Hemingway's 1917, § 3713; 1930, § 260; 1942, § 2945.

JUDICIAL DECISIONS

1. In general.

In a suit against member of board of supervisors and his surety to recover the costs of maintenance of roads which were private roads, it was not necessary to sue the entire board of supervisors and a suit could be maintained against the supervisor of district in which roads were located. Coleman v. Shipp, 223 Miss. 516, 78 So. 2d 778 (1955).

An appropriation of public funds for the construction or maintenance of private roads or driveways is to an object not authorized by law and a member of board of supervisors was personally liable for maintenance of private roads. Coleman v. Shipp, 223 Miss. 516, 78 So. 2d 778 (1955).

ATTORNEY GENERAL OPINIONS

Supervisors incur individual liability for unlawful expenditures pursuant to Section 31-7-57 even if president signed claims docket as required by Section 19-13-31; supervisors do not incur individual liability under Section 31-7-57 for lawful expenditures even if president failed to sign claims docket. Barry Sept. 22, 1993, A.G. Op. #93-0519.

§ 19-13-41. Supervisors to furnish printed blank warrants.

The board of supervisors of each county shall provide printed warrants, with proper blanks, bound in book form, with a sufficient blank margin, to be used in drawing money out of the county treasury, and such warrants, so printed and bound, as may be needed to draw money out of the school fund.

SOURCES: Codes, 1857, ch. 59, art 31; 1871, § 1380; 1880, § 2169; 1892, § 308; 1906, § 327; Hemingway's 1917, § 3700; 1930, § 261; 1942, § 2946.

§ 19-13-43. Warrants; assignment thereof.

Warrants shall be drawn by the clerk, under his seal of office, in favor of the claimants, on all demands, claims and accounts allowed by the board, in the order of their allowance, against the several funds in the county depository from which such allowed claims must be paid. The board of supervisors of any county may, in its discretion, adopt the use of a standard check signing machine to be used in lieu of the manual signing of warrants by the clerk, under such terms and conditions as the board shall deem meet and proper for the protection of the interest of the county. No warrant shall be signed, removed from the warrant book, nor delivered by the clerk until there is sufficient money in the fund upon which it is drawn to pay the same and all prior unpaid warrants drawn upon that fund, whether delivered or not. The owner of any claim so allowed may, either before or after allowance, transfer the same by assignment, and the holder of such assignment shall be entitled to receive the warrant therefor at the proper time by presenting such assignment to the clerk at any time before delivery of such warrant to the original claimant.

SOURCES: Codes, 1942, § 2936; Laws, 1940, ch. 253; Laws, 1950, ch. 244, § 5; Laws, 1982, ch. 374, eff from and after passage (approved March 22, 1982).

Cross References — Issuance of municipal warrants, see § 21-39-13.
Forgery of county warrants, see §§ 97-21-33, 97-21-61.

JUDICIAL DECISIONS

1. In general.

The policy indicated by the statute is that the board of supervisors shall only issue warrants for claims previously adjudicated by the board as valid charges against the county. Honea v. Board of Supvrs., 63 Miss. 171 (1885).

A warrant issued under an order which does not meet the requirements of the statute under which it is allowed is void. Beck v. Allen, 58 Miss. 143 (1880); Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934); Land v. Allen, 65 Miss. 455, 4 So. 117 (1888).

The issuance of a warrant is the act of the clerk; the order of the board is the evidence of the claimant's right. Polk v. Board of Supvrs., 52 Miss. 422 (1876).

An action cannot be maintained against the county on warrants issued by order of the board. Klein v. Warren County Supvrs., 51 Miss. 878 (1876).

ATTORNEY GENERAL OPINIONS

Clerk is not to issue warrant unless there is sufficient money to pay warrant; clerk must satisfy him or herself that account balance in fund, taking into consideration outstanding warrants, is sufficient to pay warrant. O'Neal Oct. 13, 1993, A.G. Op. #93-0603.

The chancery clerk must pay expenses of litigation legally authorized and approved by the board of supervisors. Nease, June 26, 2006, A.G. Op. 06-0258.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 20, 32, 84, 206.

§ 19-13-45. Registration and payment of warrants.

All county warrants shall be registered in a book to be provided by the board for that purpose, and the fact of registration shall be noted on the back of the warrant. The county depository shall pay warrants in the order of their registration, unless there be sufficient funds in the treasury to pay all registered warrants. This order of payment shall not however apply to jury or witness certificates, nor to warrants used in payment of taxes. A warrant not presented for payment within one year after date of its registration shall lose its priority. When warrants so used in the payment of taxes are turned over to the county depository by the tax collector in settlement the said tax collector shall make a list of said warrants so paid for taxes, showing date of registration of said warrants and showing by whom and on what dates said warrants were so paid for taxes, and said list shall have attached to it the affidavit of said tax collector that said warrants were actually received by his office in payment of taxes from the parties and on the dates as set out in said list.

SOURCES: Codes, 1892, § 318; 1906, § 339; Hemingway's 1917, § 3712; 1930, § 262; 1942, § 2947; Laws, 1912, ch. 206.

Cross References — Duplication of lost, mutilated, or destroyed warrants, see §§ 25-55-19 et seq.

Payment of salaries of school superintendents, principals and teachers, see § 37-9-41.

JUDICIAL DECISIONS

1. In general.

A county warrant is not negotiable and if the claim for which it is issued is unlawful, such defense can be made to the payment of the warrant in the hands of a bona fide purchaser for value. Cleveland State Bank v. Cotton Exch. Bank, 119 Miss. 868, 81 So. 170 (1919).

Creditor of the county holding warrants has right to the payment of such warrants in the order of registration. Sunflower County v. Harry Bros. Co., 107 Miss. 15, 64 So. 846 (1914); Sunflower County v. First Nat'l Bank, 64 So. 847 (Miss. 1914).

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 342-344, 385.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 117 (complaint, petition, or declaration-against county-refusal to pay warrant).

§ 19-13-47. Oath required.

The county depository shall not receive a jury or witness certificate nor a school warrant from any clerk, sheriff, or any county officer in settlement unless the officer make oath that he received the same in payment of taxes due the county, or that he paid the holder the full sum of its face value, without discount or abatement.

SOURCES: Codes, 1880, § 1702; 1892, § 324; 1906, § 345; Hemingway's 1917, § 3718; 1930, § 263; 1942, § 2948.

§ 19-13-49. Claims for livestock killed or injured in dipping process.

Any owner of livestock making claim under § 19-5-13 for damages for the death or injury of such livestock occasioned through the process of dipping or as a result of such dipping for the eradication of cattle tick, shall first make proof of the amount of his loss or damage to the board of supervisors. When conclusive proof has been made or submitted to the board and there is no evidence of contributory negligence on the part of the owner and the board is satisfied that the said owner has suffered such loss, then the board of supervisors shall pay to such owner out of the general county funds, such amount as will compensate him for his loss or damage. If the board of supervisors shall refuse to pay such claims, or any part of them, the owner shall have the right of action against the county where such damage occurred.

SOURCES: Codes, Hemingway's 1921 Supp. § 3807b; 1930, § 266; 1942, § 2951; Laws, 1917, ch. 38.

Cross References — Payment for cattle slaughtered to control tuberculosis, see § 69-15-211.

JUDICIAL DECISIONS

1. In general.

In action for death of cattle from dipping, refusal of instruction that plaintiff was required to prove his case "beyond a reasonable doubt" held erroneous. Jackson County v. Meaut, 181 Miss. 282, 179 So. 343 (1938).

RESEARCH REFERENCES

Am Jur. 37 Am. Jur. Proof of Facts 2d 639, Damages for Loss of or Injury to Animal.

§ 19-13-51. Defective bridges, causeways, and culverts; damages allowable for injury suffered therefrom.

The board of supervisors of any county shall have the power, in its discretion, to allow damages sustained to stock and other property injured or destroyed while traveling along the public highways maintained by the county where such loss is caused by defects in a bridge, causeway or culvert in such highway. No such payment shall be allowed unless such defect in such bridge, causeway or culvert was the proximate cause of the injury and was not apparent or discoverable by the exercise of reasonable diligence, and no such payment shall be made unless such defect had existed for such a time that the failure to remedy or repair the same amounts to gross carelessness on the part of the county. Such payments shall be made from the county road and bridge funds.

SOURCES: Codes, Hemingway's 1917, § 3802; 1930, § 267; 1942, § 2952; Laws, 1914, ch. 203; Laws, 1988 Ex Sess, ch. 14, § 14, eff from and after October 1, 1989.

Cross References — Specifications for bridges and culverts, see § 65-21-1.

JUDICIAL DECISIONS

1. In general.

Although § 19-13-51 partially abrogates the sovereign immunity of the board of supervisors of any county in its capacity as "overseer" of the roads, ferries and bridges within its jurisdiction, a county board's qualified immunity remains intact for discretionary decisions of the board as a whole with regard to the general condition and state of maintenance of county roads and bridges. Webb v. County of Lincoln, 536 So. 2d 1356 (Miss. 1988).

Individual member of county board of supervisors is not liable for motorist's personal injuries and damages proximately caused by an accident resulting from allegedly negligent maintenance and repair of a county road. State ex rel. Brazeale v. Lewis, 498 So. 2d 321 (Miss. 1986).

While § 19-13-51 partially abrogates the sovereign immunity of the board of supervisors in its capacity as "overseer" of the roads, ferries and bridges within its jurisdiction, the statute, in so laying the foundation for abrogation of immunity in the area, has not addressed the role of an individual supervisor in his governmental capacity to repair and maintain the roads within his district. State ex rel. Brazeale v. Lewis, 498 So. 2d 321 (Miss. 1986).

In making the determination as to which roads within his district should be the better maintained would be a discretionary matter with the individual member of the county board of supervisors and, absent some personal tort committed by him, he would be immune from liability for damages caused by alleged negligence in the maintenance of the roads. State ex rel. Brazeale v. Lewis, 498 So. 2d 321 (Miss. 1986).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

§ 19-13-53. Defective bridges, causeways, and culverts-presentation of claims.

A claim under Section 19-13-51 for accidents occurring shall be made in writing, itemized and sworn to, and shall be filed within three months after such accident occurs, and shall remain on file with the clerk of the board of supervisors for sixty days before the first day of the term at which it comes up for hearing. Notice of its pendency shall be published in a newspaper published in the county at least one time before such claim comes up for hearing, and if there be no paper in such county, by posting notices at the courthouse and other public places.

SOURCES: Codes, Hemingway's 1917, § 3803; 1930, § 268; 1942, § 2953; Laws, 1914, ch. 203.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 598 et seq.

§ 19-13-55. Defective bridges, causeways, and culverts; payment of claims.

No payment shall be made hereunder except by a four-fifths recorded vote of all the members of the board of supervisors. Where the property injured or destroyed is properly assessable, no evidence of the actual value of the property injured or destroyed shall be received or considered, but the assessed value thereof as shown by the assessment rolls of the county shall be the only evidence of value, and the damages allowed shall be fixed in proportion. Where the property injured or destroyed is not properly assessable and was not assessed, then the board of supervisors shall receive evidence of the actual value of the same, and shall allow damages in proportion. Sections 19-13-51 through 19-13-55 shall not be construed as creating any enforceable liability against any county.

SOURCES: Codes, Hemingway's 1917, §§ 3804, 3805; 1930, § 269; 1942, § 2954; Laws, 1914, ch. 203.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

SELLING PERSONAL PROPERTY TO, OR DOING REPAIR WORK, FOR COUNTIES
[REPEALED]

SEC.
19-13-71 through 19-13-79. Repealed

§§ 19-13-71 through 19-13-79. Repealed.

Repealed by Laws of 1990, ch. 425, § 1, eff from and after passage (approved March 15, 1990).

§ 19-13-71. [Codes, 1942, § 2940-11; Laws, 1950, ch. 246, § 3; Laws, 1962, ch. 247, § 1; Laws, 1966, ch. 295, § 1; Laws, 1985, ch. 455, § 4]

§ 19-13-73. [Codes, 1942, § 2940-11.5; Laws, 1962, ch. 246]

§ 19-13-75. [Codes, 1942, § 2940-12; Laws, 1950, ch. 246, § 4; Laws, 1962, ch. 247, § 2; Laws, 1980, ch. 440, § 27]

§ 19-13-77. [Codes, 1942, §§ 2940-13, 2940-14; Laws, 1950, ch. 246, §§ 5, 6; Laws, 1962, ch. 247, § 3]

§ 19-13-79. [Codes, 1942, § 2940-15; Laws, 1950, ch. 246, § 7]

Editor's Note — Former § 19-13-71 related to licenses generally.

Former § 19-13-73 related to filing of inventory of certainused equipment, machinery, and road building material.

Former § 19-13-75 related to audit of records.

Former § 19-13-77 related to violations and penalties therefor.

Former § 19-13-79 related to revocation of licenses for violations.

CONTRACTS FOR PRINTING, STATIONERY AND OFFICE SUPPLIES

SEC.	
19-13-101.	Definition of "stationery."
19-13-103.	Repealed.
19-13-105.	Repealed.
19-13-107.	Out-of-state contracts.
19-13-109.	Bids may be rejected.
19-13-111.	Bids and contracts to be definite.
19-13-113.	Rejection of bids when bidder is unfair.
19-13-115.	Bonds required of contractors.
19-13-117.	Payment of bills.

19-13-119. Penalty for noncompliance with the law.

§ 19-13-101. Definition of "stationery."

The term stationery, as applied to purchases for the counties of the state, includes everything properly so called, and the boards of supervisors shall provide for everything in contracts for stationery as herein defined that can be conveniently so purchased.

SOURCES: Codes, 1892, § 4218; 1906, § 4766; Laws, 1913, ch. 3, Hemingway's 1917, § 7537; 1930, § 5935; 1942, § 8977; Laws, 1968, ch. 506, § 5, eff from and after passage (approved August 8, 1968).

Cross References — Definition of "stationery" as applied to purchases for the state, see § 1-3-51.

Furnishing stationery to court reporter, see § 9-13-23.

Penalty for noncompliance with this section, see § 19-13-119.

§ 19-13-103. Repealed.

Repealed by Laws of 1981, ch. 306, § 6, eff from and after passage (approved February 9, 1981).

[Codes, 1906, § 4767; Hemingway's 1917, § 7538; 1930, § 5936; 1942, § 8978; Laws, 1928, ch. 195; Laws, 1935, ch. 33; Laws, 1936, ch. 222; Laws, 1980, ch. 440, § 17]

Editor's Note — Former § 19-13-103 related to contracting of county printing by board of supervisors.

§ 19-13-105. Repealed.

Repealed by Laws of 1980, ch. 440, § 28 eff from and after January 1, 1981.

[Codes, 1942, § 8980; Laws, 1936, ch. 222]

Editor's Note — Laws, 1981, ch. 306, § 6, eff from and after passage (approved February 9, 1981), also purported to repeal this section.

Former § 19-13-105 related to emergency printing.

§ 19-13-107. Out-of-state contracts.

The boards of supervisors, if satisfied that the bids offered are materially more expensive to the taxpayers of the state than prevails in other adjoining states, may require such bids to be lowered and if the resident bidders refuse to lower such bids, the boards of supervisors may make temporary contracts with printers and stationers outside the state until such time as contracts satisfactory to the boards of supervisors can be made with resident printers and stationers.

SOURCES: Codes, 1942, § 8981; Laws, 1936, ch. 222.

Cross References — Penalty for noncompliance with this section, see § 19-13-119.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts § 20.

§ 19-13-109. Bids may be rejected.

The board of supervisors may reject any and all bids and readvertise for new ones and no bid shall be considered unless accompanied by a certified check of a solvent bank, for at least Twenty five Dollars ($25.00) or said sum in cash, the same to be forfeited to the county in the event the bidder shall fail for ten days after the acceptance of his bid to enter into the contract awarded; and when a contract is awarded the contractor shall give bond as provided in Section 19-13-115. The deposit of all bidders as above provided shall be returned to the bidders when the award has been made and the bond above mentioned given.

SOURCES: Codes, 1906, § 4768; Hemingway's 1917, § 7540; 1930, § 5938; 1942, § 8983; Laws, 1913, ch. 3.

Cross References — Penalty for noncompliance with this section, see § 19-13-119.

RESEARCH REFERENCES

ALR. Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 A.L.R.5th 747.

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts §§ 44 et seq., 66 et seq.

§ 19-13-111. Bids and contracts to be definite.

All bids and contracts for stationery, blank books, office supplies and other things must be specific in stating the kinds or brands and qualities of all articles, as far as practicable; the weight per ream and material of all paper; the price per quire and the weight per ream of books and record books, with the style of binding and size of each kind of book duly classified; and, other things being equal, the several boards shall give the preference to those bids which are most specific as to the price and quality of the various articles. In case bids are in all respects equal between resident and nonresident bidders, the board of supervisors shall give preference to citizens of this state.

SOURCES: Codes, 1892, § 4220; 1906, § 4770; Laws, 1913, ch. 3, Hemingway's 1917, § 7542; 1930, § 5939; 1942, § 8984; Laws, 1968, ch. 506, § 6, eff from and after passage (approved August 8, 1968).

Cross References — Penalty for noncompliance with this section, see § 19-13-119.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts § 21.

§ 19-13-113. Rejection of bids when bidder is unfair.

If it appears to the satisfaction of the board of supervisors, on any opening of bids, that there has been a combination between the bidders or that some of them are connected with a trust or combine, or that the bidding is purposely unfair, in raising the prices of some articles and lowering those of others out of proportion so that it is difficult to determine which of the bids is the lowest and best, all bids may be rejected and new bids shall be called for and requested.

SOURCES: Codes, 1892, § 4221; 1906, § 4771; Hemingway's 1917, § 7543; 1930, § 5940; 1942, § 8985; Laws, 1913, ch. 3; Laws, 1968, ch. 506, § 7, eff from and after passage (approved August 8, 1968).

Cross References — Penalty for noncompliance with this section, see § 19-13-119.
Penalty for collusion to prevent individual bidding, see § 75-21-15.
Penalty for conspiracy to defraud state agencies, see § 97-7-11.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts §§ 23, 24, 53 et seq., 45, 58.

§ 19-13-115. Bonds required of contractors.

The board of supervisors shall require the successful bidder to execute a bond with sufficient surety or sureties to be approved by it in a sufficient penalty conditioned for the faithful performance of the contract and the prompt delivery, free of all charges for freight and otherwise, at the price specified. The bond of the contractor taken by the board of supervisors shall be filed with the clerk of the board; and such bond shall be subject to the provisions of law applicable to the bonds of county officers. The board may accept the undertaking of an approved guaranty company as surety, with or without other sureties, on such bonds.

SOURCES: Codes, 1892, § 4222; 1906, § 4772; Hemingway's 1917, § 7544; 1930, § 5941; 1942, § 8986; Laws, 1913, ch. 3; Laws, 1968, ch. 506, § 8, eff from and after passage (approved August 8, 1968).

Cross References — Penalty for noncompliance with this section, see § 19-13-119.

RESEARCH REFERENCES

ALR. State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

Am Jur. 17 Am. Jur. 2d, Contractors' Bonds §§ 1 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Contractors' Bonds, Forms 51 et seq. (public construction work and contracts).

5A Am. Jur. Legal Forms 2d, Contractors' Bonds, §§ 67:25-67:63 (performance bonds and bonds securing payment of labor, material, and other liens).

§ 19-13-117. Payment of bills.

All accounts and bills for the purchase of stationery, records, blank books, office supplies, and other things herein authorized by the board of supervisors shall be approved and allowed as other claims against said counties are required to be, and warrants issued for the payment out of the county treasury.

SOURCES: Codes, 1892, § 4224; 1906, § 4774; Hemingway's 1917, § 7546; 1930, § 5943; 1942, § 8988; Laws, 1913, ch. 3; Laws, 1968, ch. 506, § 9, eff from and after passage (approved August 8, 1968).

Cross References — Penalty for noncompliance with this section, see § 19-13-119.

§ 19-13-119. Penalty for noncompliance with the law.

Members of the board of supervisors and county officers failing to comply with the requirements of Sections 19-13-101 through 19-13-119 shall be deemed guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than Ten Dollars ($10.00) or imprisonment or both, as provided by law.

SOURCES: Codes, Hemingway's 1917; § 7539; 1930, § 5937; 1942, § 8982; Laws, 1916, ch. 135.

Cross References — Penalty for granting or receiving unauthorized appropriation, see § 19-13-35.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

CHAPTER 15

Records and Recording

Sec.
19-15-1. Preservation of essential public records of county governments; admissibility in evidence of copies of original records.
19-15-3. Reproduction of certain county records; destruction of originals.
19-15-5. Equipment for electronic storage of documents for chancery clerks.
19-15-7. General index of disposed chancery and probate cases; filing system for papers in such cases.
19-15-9. Rebinding of record books; transcription of deteriorating record books.
19-15-11. Record of abstracts of title.
19-15-13 and 19-15-15. Repealed

§ 19-15-1. Preservation of essential public records of county governments; admissibility in evidence of copies of original records.

The Legislature declares that records containing information essential to the operation of government and to the protection of the rights and interests of persons should be protected against the destructive effect of all forms of disaster whether fire, flood, storm, earthquake, explosion or other disaster, and whether such occurrence is caused by an act of nature or man, including an enemy of the United States. It is, therefore, necessary to adopt special provisions for the preservation of essential records of counties, and this section shall be liberally construed to effect its purposes. However, it is the express intention of this section that the provisions herein contained are not mandatory but are permissive only and shall authorize preservation of records as herein contemplated within the discretion of the governing authorities of the counties of the state and in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

The board of supervisors of any county is hereby authorized and empowered in its discretion to preserve essential records, or any portion thereof, of the county deemed by the board of supervisors to be an essential record necessary to the operation of government in an emergency created by disaster or containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of governments in the resumption of operations after the destruction or damage of the original records.

The board of supervisors of any county is authorized and empowered in its discretion to make and enter into contracts and agreements with any person, firm or corporation to make and prepare copies or duplicates of records, and, subject to the standards established by the Department of Archives and History, to provide for and enter into contracts concerning the safekeeping and preservation of copies or duplicates at points of storage at a location approved by the Local Government Records Committee.

In the event that the original record or records shall have been destroyed, the copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. An enlargement or facsimile of a reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court.

The board of supervisors of any such county is authorized and empowered, in its discretion, to appropriate and expend monies out of the available funds of the county for the purposes of this section.

SOURCES: Codes, 1942, § 2900.3; Laws, 1963, 1st Ex Sess ch. 11, §§ 1-7; Laws, 1994, ch. 521, § 31; Laws, 1996, ch. 537, § 8; Laws, 2006, ch. 495, § 6, eff from and after July 1, 2006.

Cross References — Reproduction and destruction of certain county records, see § 19-15-3.

Purchase of photostating, etc. equipment for chancery clerks, see § 19-15-5.

Preservation of municipal records, see § 21-15-35.

Reproduction and destruction of municipal records, see § 21-15-37.

Preservation, reproduction, and destruction of records under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.

ATTORNEY GENERAL OPINIONS

The board of supervisors must contract for the purchase of restoration of records. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Trials, Locating Public Records, § 54.

§ 19-15-3. Reproduction of certain county records; destruction of originals.

Whenever any county records, documents, files or papers whatsoever are required by law to be preserved and retained, or which are necessary or desirable to be preserved or retained, the board of supervisors of the county shall have the power and authority, in its discretion, to destroy or dispose of any records, documents, files or papers after having reproductions made thereof as hereinafter provided and in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

Whenever the board of supervisors of any county shall desire to destroy or dispose of any records, documents, files or papers, the board shall first cause the same to be reproduced under standards established by the Department of Archives and History using microfilm, microfiche, data processing, computers, magnetic tape, optical discs or other medium. If the county where records and the like are to be destroyed or disposed of does not have or own the necessary equipment to reproduce same, the board of supervisors shall be authorized and empowered to enter into a contract for the reproduction thereof, which contract may be for a period of not more than twelve (12) months from the date thereof. The contract shall be awarded to the lowest and best bidder after the board of supervisors shall have advertised its intentions of awarding such contract by publication of a notice thereof once each week for at least three (3) consecutive weeks in some newspaper published or having a general circulation in such county.

After reproduction of the records and the like shall have been made, the board of supervisors shall have the power and authority to destroy and dispose of the originals thereof after spreading upon its minutes certification that the reproductions are true and correct copies and disposal is in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1; the reproductions shall thereafter be preserved, retained and stored by the board of supervisors as a record of the county, and provision shall be made for preserving, examining and using them. Any reproductions or copy of any original record or other documents shall be deemed to be the original record for all purposes and shall be admissible as evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes set forth herein, be deemed to be a transcript, exemplification or certified copy of the original record.

The board of supervisors of any county is hereby authorized to pay all expenses incurred in reproducing records and the like and in making provision for the preservation, retention and storage of the reproductions from the general fund of the county.

When any of the records and the like of which reproductions are made under the provisions of this section are declared by law or are by their nature confidential and privileged records, then the reproduction thereof shall likewise be deemed to be confidential and privileged to the same extent as the original records and the like.

Nothing herein shall be construed to require the keeping and preservation of any records and documents which are not required by law or a records control schedule to be kept and preserved, or which it is not desirable or necessary to keep and preserve, and in all cases where records and the like are authorized by law to be destroyed or disposed of, they may be disposed of as authorized by a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

SOURCES: Codes, 1942, § 2900.5; Laws, 1950, ch. 240, §§ 1-6; Laws, 1994, ch. 521, § 32; Laws, 1996, ch. 537, § 9; Laws, 2006, ch. 495, § 7, eff from and after July 1, 2006.

Cross References — Purchase of photostating equipment for chancery clerk, see § 19-15-5.

Reproduction and destruction of municipal records, see § 21-15-37.

Preservation, reproduction and destruction of records under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.

Preservation of bank records, see § 81-5-7.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 2 Am. Jur. Trials, Locating Public Records § 54.

§ 19-15-5. Equipment for electronic storage of documents for chancery clerks.

The board of supervisors of any county is authorized and empowered, in its discretion, to purchase all the necessary equipment and supplies needed for the electronic storage of documents out of the general fund of said county. Before purchasing such equipment advertisement shall be made, as required by law for letting of bids, and the board shall purchase the equipment from the lowest and best bidder on the type machine desired to be purchased.

SOURCES: Codes, 1942, § 2900.7; Laws, 1952, ch. 225; Laws, 1994, ch. 521, § 33, eff from and after passage (approved March 25, 1994).

Cross References — Chancery clerk's custody of certain records and papers, see § 9-5-163.

Authority of board of supervisors to contract for reproduction of certain documents, see § 19-15-3.

Authority for administrator of estate to make photographic copies of certain claims, see § 91-7-149.

JUDICIAL DECISIONS

1. In general.

A chancery clerk was entitled to a fee of 25 cents for every 100 words for furnishing transcripts of records, regardless of whether reproduction of transcript pages was by typewriting or photostatic process. Superior Oil Co. v. Foote, 216 Miss. 728, 65 So. 2d 453 (1953).

§ 19-15-7. General index of disposed chancery and probate cases; filing system for papers in such cases.

The board of supervisors of any county may, when in its opinion the interest of the county would be served thereby, have made a complete index of all chancery court causes and probate court causes which have been finally disposed of in the courts of the county. Said board may provide for the proper storage and preservation of the original papers in all cases which have been finally disposed of in the chancery court or the probate court of the county. Such general index shall be prepared by the chancery clerk, and the necessary filing system shall be installed under his direction. The board of supervisors shall be authorized to pay to the chancery clerk such reasonable compensation therefor as the board may deem proper.

SOURCES: Codes, 1942, § 2899-01; Laws, 1946, ch. 382; Laws, 1994, ch. 521, § 34, eff from and after passage (approved March 25, 1994).

Cross References — Entries in general docket, see § 9-5-201.
Docket entries in matters testamentary, see § 9-5-203.

RESEARCH REFERENCES

CJS. 76 C.J.S., Records §§ 17, 18.

§ 19-15-9. Rebinding of record books; transcription of deteriorating record books.

The board of supervisors shall have rebound all record books of conveyances and of last wills and testaments, of indexes thereto, and all other record books of the county that need to be rebound. Said board shall have transcribed into new record books all conveyances and other instruments of record, and indexes thereto, that need to be transcribed for preservation. The cost thereof shall be paid out of the county treasury.

SOURCES: Codes, 1892, § 299; 1906, § 318; Hemingway's 1917, § 3691; 1930, § 224; 1942, § 2900.

Cross References — Procedures for supplying lost records, see § 25-55-3.

JUDICIAL DECISIONS

1. In general.

A loose leaf book arranged as such books are for court records, is held to be a well bound book. Richardson v. Woolard, 133 Miss. 417, 97 So. 808 (1923).

§ 19-15-11. Record of abstracts of title.

The board of supervisors of any county may, when in its opinion the interest of the county would be subserved thereby, procure by purchase or have made, a complete abstract of titles to land in the county, and may provide all books necessary for the purpose. The costs thereof shall be paid out of the county treasury. Such abstracts, when purchased or made, shall be kept in the office of the chancery clerk of the county as a public record.

SOURCES: Codes, 1892, § 301; 1906, § 320; Hemingway's 1917, § 3693; 1930, § 226; 1942, § 2902.

Cross References — The use of abstracts to replace lost deed records, see § 25-55-5.

JUDICIAL DECISIONS

1. In general.

It is not necessary to file with the clerk plans and specifications of an abstract of title to land in the county before purchasing same or contracting therefor as such contracts do not come within the purview of Code 1906, § 320. Board of Supvrs. v. Gully, 122 Miss. 46, 84 So. 163 (1920).

In ordering an abstract of titles prepared or in purchasing same, it is not necessary for the minutes of the board to recite that in the opinion of the board the interests of the county would be subserved thereby. Board of Supvrs. v. Gully, 122 Miss. 46, 84 So. 163 (1920).

Under the provisions of this section [Code 1942, § 2902], as amended, and Code 1906, and § 320 the board of supervisors is authorized to provide an abstract of title to lands in the county and cause it to be kept up to date at all times, and in such case chancery clerks may charge abstract fees. Yazoo & Miss. V. Ry. v. Edwards, 78 Miss. 950, 29 So. 770 (1901).

Said statutes are constitutional. They do not violate Const 1890 § 90 paragraph (o), prohibiting local legislation creating, increasing, or decreasing the fees of officers. Yazoo & Miss. V. Ry. v. Edwards, 78 Miss. 950, 29 So. 770 (1901).

RESEARCH REFERENCES

CJS. 76 C.J.S., Records §§ 17, 18.

§§ 19-15-13 and 19-15-15. Repealed.

Repealed by Laws of 1993, ch. 546, § 2, eff from and after January 1, 1994.

§ 19-15-13. [Codes, 1892, § 302; 1906, § 321; Hemingway's 1917, § 3694; 1930, § 227; 1942, § 2903; Laws, 1920, ch. 255]

§ 19-15-15. [Codes, Hemingway's 1921 Supp. § 3694a; 1930, § 228; 1942,§ 2904; Laws, 1920, ch. 255]

Editor's Note — Former § 19-15-13 related to index to land numbers.

Former § 19-15-15 related to entry of conveyances and documents affecting title to land in sectional index.

CHAPTER 17

County Auditors

Sec.

19-17-1. The clerk is county auditor.
19-17-3. To keep certain ledger accounts.
19-17-5. To keep depository funds ledger.
19-17-7. To keep accounts of officers.
19-17-9. To issue receipt warrants.
19-17-11. To settle with officers, and exact payment.
19-17-13. To debit and credit tax collector with county taxes.
19-17-15. To charge appropriate officer with jury taxes, fines, penalties, and forfeitures.
19-17-17. To examine books of officers and make proper charges; report to grand jury.
19-17-19. To report defaulting officers.
19-17-21. To credit and report on poll tax.

§ 19-17-1. The clerk is county auditor.

The clerk of the board of supervisors is the county auditor, and he shall perform the duties of auditor as provided by law.

SOURCES: Codes, 1892, § 326; 1906, § 347; Hemingway's 1917, § 3720; 1930, § 295; 1942, § 3003.

Cross References — Authority of Governor to appoint examiner of public accounts to audit accounts of county officers, see § 7-1-45.

County budgets, see §§ 19-11-1 et seq.

Auditors of municipalities, see § 21-15-21.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Salaries of county auditors, see § 25-3-19.

JUDICIAL DECISIONS

1. In general.

Under Article 6, § 170 of the Mississippi Constitution and § 19-17-1, the duties of the clerk of the board of supervisors and the county auditor are just as much a part of the duties of the chancery clerk as attending and keeping the minutes of all chancery court proceedings as is required by §§ 9-5-135 and 9-5-137. Barlow v. Weathersby, 597 So. 2d 1288 (Miss. 1992).

A county board of supervisors' refusal to reinstate the chancery clerk to the positions of clerk of the board of supervisors and county auditor exceeded the board's limited grant of authority under § 19-3-29, which authorizes the board to appoint a clerk pro tempore, where the chancery clerk had merely intended to temporarily vacate those positions and there were no findings that the chancery clerk failed to perform any duty required of him so as to justify the board's refusal to comply with his request for reinstatement. Barlow v. Weathersby, 597 So. 2d 1288 (Miss. 1992).

ATTORNEY GENERAL OPINIONS

All funds received for the county or taxing districts must be paid into the proper depository, and all legal allowances must then be made by order of the board of supervisors. Ops Atty Gen, 1933-35, p 44.

All accounts received against the county should be filed with the board of supervisors for allowance or disallowance. Ops Atty Gen, 1933-35, p 44.

The chancery clerk is auditor of the county and the board cannot employ any other auditor. The Code authorizes the state auditor to make audits of counties and for counties, and the state auditor and the chancery clerk must do all of the auditing work for the county. Ops Atty Gen, 1933-35, p 44.

The board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties; such duties include but are not limited to the issuance of warrants under the seal of his office, the duties of County Auditor, and the duties of County Treasurer. Goodwin, Mar. 30, 2001, A.G. Op. #01-0156.

A county board of supervisors may contract with a private CPA firm to conduct a performance and compliance audit of the county development commission, but only in so far as such audit does not duplicate the audits performed by the chancery clerk. Meadows, Aug. 23, 2004, A.G. Op. 04-0408.

RESEARCH REFERENCES

CJS. 20 C.J.S., Counties §§ 205, 206, 216-218.

§ 19-17-3. To keep certain ledger accounts.

The county auditor shall keep a well-bound book, in which he shall keep an account with each county office, and with the courthouse, jail, and poorhouse, and wherein he shall enter allowances for each. He shall keep accounts of allowances made for mileage and pay of the members of the board of supervisors and of jurors, and of witnesses for the state, each separately, as well as expenditures on account of each part of every public road under a separate contract or other separate link.

SOURCES: Codes, 1892, § 328; 1906, § 349; Hemingway's 1917, § 3722; 1930, § 296; 1942, § 3004.

Cross References — Audit of expenditures made by county development commission, see § 59-9-27.

Preparation of warrants for disbursement of district road funds, see § 65-19-39.

ATTORNEY GENERAL OPINIONS

The owners of a community hospital did not have authority to convey a hospital parking lot where it could not be found as a matter of fact that the parking lot had ceased to be used for county purposes. Galloway, Feb. 11, 2000, A.G. Op. #2000-0036.

§ 19-17-5. To keep depository funds ledger.

The county auditor shall keep, as a record in his office, a book to be styled "depository funds ledger" in which he shall record all receipts and disbursements of county funds, and he shall compare and reconcile said "depository funds ledger" with the depository's report of funds of the county on deposit, as shown by such report, quarterly and/or at such other times, as may be required by the board of supervisors.

SOURCES: Codes, 1892, § 329; 1906, § 350; Hemingway's 1917, § 3723; 1930, § 297; 1942, § 3005; Laws, 1946, ch. 337.

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

How banks may qualify as county depositories, see § 27-105-315.

Depositories for county hospital funds, see § 27-105-365.

§ 19-17-7. To keep accounts of officers.

The county auditor shall keep a suitable book, in which he shall enter the accounts of all officers whose duty it is to receive or collect any money for the county, exhibiting the debits and credits, and what they represent, whether money, warrants, or bonds, and whether belonging to the general or any special fund. Such book shall be at all times subject to the inspection of any citizen of the county.

SOURCES: Codes, 1880, § 2164; 1892, § 330; 1906, § 351; Hemingway's 1917, § 3724; 1930, § 298; 1942, § 3006.

§ 19-17-9. To issue receipt warrants.

It shall be the duty of the county auditor to issue his receipt warrant to any person desiring to pay money into the county treasury, specifying the amount and the particular account on which such payment is to be made, and the fund to which it belongs. However, a receipt warrant shall not be credited to the person making such payment, nor be charged to the county depository, until there shall be produced and filed with such auditor a duplicate receipt, signed by the depository, for the sum specified in such receipt warrant.

SOURCES: Codes, 1880, § 2174; 1892, § 331; 1906, § 352; Hemingway's 1917, § 3725; 1930, § 299; 1942, § 3007.

Cross References — Requirement that county depository furnish triplicate receipts to depositors, see § 27-105-321.

Forgery of county warrants, see § 97-21-61.

§ 19-17-11. To settle with officers, and exact payment.

The county auditor shall examine, audit and settle the accounts of the collector of taxes payable into the county treasury, and of all officers receiving funds payable into such treasury, and shall require all sums due from any officer to be paid into the county depository on the day such funds are collected or on the next business day thereafter. In all cases, on issuing his receipt warrant for the payment of any money into the county treasury, he shall charge the person to whom the warrant is issued with its amount, if not before charged to such person; and on presentation to him of the duplicate receipt of the county depository, he shall charge it with such sum, and credit the person to whom the receipt warrant was issued with the sum. If any officer whose duty it is to make any payment into the county treasury shall fail to do so as prescribed by law, the county auditor or the board of supervisors shall forthwith institute suit against the officer on his official bond for such default.

SOURCES: Codes, 1880, § 2166; 1892, § 332; 1906, § 353; Hemingway's 1917, § 3726; 1930, § 300; 1942, § 3008; Laws, 1985, ch. 514, § 14; Laws, 1986, ch. 305, § 1, eff from and after passage (approved February 27, 1986).

Cross References — Settlement of tax collector's accounts generally, see §§ 27-29-1 et seq.

Duty of tax collector to present cash book to county auditor, see § 27-41-41.

Settlement with county by paying amount due to county depository, see § 27-105-325.

§ 19-17-13. To debit and credit tax collector with county taxes.

It shall be the duty of the clerk, as county auditor, on delivering the assessment rolls to the tax collector, to charge him with the full amount of all taxes required to be paid into the county treasury, as shown by the rolls and the law, or by the order of the board of supervisors levying county taxes, and in settling with him to charge him with any additional assessments on the rolls due the county that may have been made, and to credit him only with such payments as he shall have made, according to law, into said treasury, and with such legal allowances as shall have been made to him by the board of supervisors, or as are fixed by law.

SOURCES: Codes, 1880, § 2167; 1892, § 333; 1906, § 354; Hemingway's 1917, § 3727; 1930, § 301; 1942, § 3009.

Cross References — Duty of grand jury to examine tax collector's books, see § 13-5-59.

Monthly reports of tax collector, see §§ 27-29-11, 27-29-15.

Duty of auditor to notify district attorney of default by tax collector, see § 27-29-17.

Suspension of tax collector for failure to make report, see § 27-29-25.

Penalty for failure of tax collector to make settlement, see § 97-11-47.

§ 19-17-15. To charge appropriate officer with jury taxes, fines, penalties, and forfeitures.

It shall be the duty of the clerk, on receiving from the circuit court the list of jury taxes accrued at any term of the circuit court, and of the fines, penalties and forfeitures imposed or accrued at each term of the court, at once, as county auditor, to charge the sheriff of the county, or the person acting as such for the time, with the full amount of such jury taxes, fines, penalties, and forfeitures, and to require the sheriff, or the person acting as such, to pay the amount into the county treasury, except such as he shall show a legal excuse for not collecting and paying.

When a fine, penalty, or forfeiture shall be imposed by any court of which he is a clerk, he shall, as county auditor, at once charge such sum to the proper officer, and require its payment into the county treasury.

SOURCES: Codes, 1880, §§ 2168, 2169; 1892, §§ 334, 335; 1906, §§ 355, 356; Hemingway's 1917, §§ 3728, 3729; 1930, §§ 302, 303; 1942, §§ 3010, 3011.

Cross References — Duty of justice of the peace to account for all fines and penalties, see § 9-11-19.

Remedy against sheriff for failure to return bonds, see §§ 11-7-219, 99-19-67.

Liability of sheriffs and other officers for default as to fines, see §§ 11-7-221, 99-19-69.

Authority of grand jury to examine books of all county officers, see § 13-5-57.

JUDICIAL DECISIONS

1. In general.

After the adoption of Const. 1890, fines collected after November of that year were not payable into the state treasury, but into the treasury of the county in which the prosecutions were begun. State ex rel. Warren County v. Stone, 69 Miss. 375, 11 So. 4 (1892).

Where the fines so collected after November 1, 1890, have been erroneously credited by the county treasurer to the state against the county's share of the school fund, the board of supervisors may, by mandamus, compel the auditor to pay the county its distributive share of the county school fund without deduction because of such fines and forfeitures erroneously credited. State ex rel. Warren County v. Stone, 69 Miss. 375, 11 So. 4 (1892).

§ 19-17-17. To examine books of officers and make proper charges; report to grand jury.

The clerk of the board of supervisors, as county auditor, is authorized and required to examine the accounts, dockets and records of clerks, sheriffs and other officers of his county, to ascertain if any money payable into the county treasury is properly chargeable to them, and he shall charge them with such money. It shall be his duty to make written report, under oath, to each regular session of the grand jury setting forth the conditions as found by said examination, and any failure to make such report shall be a misdemeanor, and upon conviction for same he shall be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00).

SOURCES: Codes, 1880, § 2171; 1892, § 336; 1906, § 357; Hemingway's 1917, § 3730; 1930, § 304; 1942, § 3012; Laws, 1914, ch. 237

Cross References — Duty of grand jury to examine books of all county officers, see § 13-5-57.

Duty of grand jury to examine books of tax collector, see § 13-5-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 19-17-19. To report defaulting officers.

If any justice of the peace, or other officer required by law to make report or furnish a list to the clerk of the board of supervisors, or to make payment of any money accruing to the county or state and payable into the county treasury, shall fail to make such report or furnish such list, or if the county depository shall fail to bring all moneys or certificates of deposit belonging to the county treasury to the board of supervisors to be counted by the board as required by law, it shall be the duty of the clerk, as county auditor, to report such delinquent in writing, to the grand jury, and also to the district attorney, for the institution of legal proceedings for the default.

SOURCES: Codes, 1880, § 2172; Laws, 1982, § 338; 1906, § 359; Hemingway's 1917, § 3732; 1930, § 305; 1942, § 3013.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Duty of justice of the peace to account for all fines and penalties, see § 9-11-19.

Duty of auditor to notify district attorney of default of tax collector, see § 27-29-17.

§ 19-17-21. To credit and report on poll tax.

It shall be the duty of the county auditor to place to the credit of the public school fund of the county all sums of money paid into the county treasury arising from the state Two Dollars ($2.00) poll tax, and, on the first day of October and April of each fiscal year, he shall report to the county superintendent of public education and the auditor of public accounts the amount of such credit during the preceding six months.

SOURCES: Codes, 1880, § 2173; 1892, § 339; 1906, § 360; Hemingway's 1917, § 3733; 1930, § 306, 1942, § 3014.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

CHAPTER 19

Constables

Sec.

19-19-1. Number to be elected.
19-19-2. Election from single member election districts.
19-19-3. Oath and bond of office.
19-19-5. General duties of constables; training program.
19-19-6. Training programs for constables.
19-19-7. Constable to attend justices' court.
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19-19-15. Penalty for neglect of duty.

§ 19-19-1. Number to be elected.

(1) In accordance with the provisions of Section 19-19-2, there shall be a competent number of constables in each county of the state.

(2) The board of supervisors shall furnish each constable with at least two (2) complete uniforms and with some type of motor vehicle identification which clearly indicates that the motor vehicle is being used by a constable in his official capacity. A constable shall, at all times while on official duty, wear his uniform and, when in his vehicle, clearly display his official motor vehicle identification required to be furnished pursuant to this subsection. In addition, the board of supervisors shall provide each constable with a blue flashing light which the constable shall affix to his motor vehicle at all times while using such motor vehicle on official duty. The design of such uniforms, the design of such motor vehicle identification and the type of such flashing blue light shall be prescribed by the Board on Law Enforcement Officers Standards and Training in order that all constables within the state shall be similarly equipped.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 4 (1); 1857, ch. 6, art 174; 1880, § 386; 1892, § 767; 1906, § 829; Hemingway's 1917, § 635; 1930, § 630; 1942, § 3885; Laws, 1900, ch. 71; Laws, 1932, ch. 194; Laws, 1948, ch. 260; Laws, 1960, chs. 192, 193; Laws, 1966, ch. 367, § 1; Laws, 1968, ch. 573, § 1; Laws, 1986, ch. 441, § 2, eff January 1, 1988 (the United States Attorney General interposed no objection to the amendment on February 20, 1987).

Editor's Note — In view of the broad language employed in the per curiam opinion of the three-judge federal district court in Evers v. State Board of Election Commrs. 327 F Supp 640, at p. 644, some doubt may arise as to the enforceability of each election provision of the Code of 1942, amended subsequent to November 1, 1964, brought over into the Mississippi Code of 1972.

Cross References — Prohibition against passing local laws providing for the creation of districts for the election of constables, see Miss. Const. Art. 4, § 90.

Number of constables required by Constitution, and their term of office, see Miss. Const. Art. 6, § 171.

Applicability of uniform system for issuance of county bonds to financing of interlocal improvements or projects, see § 17-13-13.

Provision that constables shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Board on Law Enforcement Officer Standards and Training, see §§ 45-6-5 through 45-6-9.

ATTORNEY GENERAL OPINIONS

At least two uniforms are furnished by board of supervisors by statute for constables; in board's discretion, board may furnish as many as board deems necessary. Clifford, August 15, 1990, A.G. Op. #90-0598.

County board of supervisors, in its discretion, may purchase such equipment as may be proper for a law enforcement officer and assign it for the use of a constable, and such equipment will remain the property of the county. Lamar, Jan. 16, 1992, A.G. Op. #91-0932.

Candidate for constable must reside in district in which he or she chooses to run for election; if candidate is resident of district he or she seeks to serve at time executive committee meets to rule on candidate qualifications and will, subject to no contingencies, meet all requirements as of date of general election, candidate would be eligible to have name placed on primary election ballot. Cason, July 2, 1992, A.G. Op. #92-0474.

A Constable may use magnetic signs that stick to a vehicle for the purposes of identifying an official constable vehicle and complying with Section 19-19-1. The decals could be removed when the constable is not on official duty and the vehicle is being used in some other capacity. Jones, May 24, 1996, A.G. Op. #96-0326.

Sections 19-9-1 through 19-9-31 do not provide authority to execute a deed of trust or mortgage upon community hospital real property as collateral for borrowings. Hurt, May 14, 1999, A.G. Op. #99-0218.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

§ 19-19-2. Election from single member election districts.

The board of supervisors of each county shall establish single member election districts in the county for the election of each of the constables at the 1987 general election and for each general election thereafter. Such districts shall be of the same number and shall have the same boundaries as districts established for justice court judges pursuant to Section 9-11-2, Mississippi Code of 1972.

SOURCES: Laws, 1986, ch. 441, § 1, eff February 20, 1987 (the date the United States Attorney General interposed no objection to the insertion of the section in the 1972 Code).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 6, 18, 32.

CJS. 80 C.J.S., Sheriffs and Constables § 14.

§ 19-19-3. Oath and bond of office.

Constables shall take the oath of office prescribed by the Constitution and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officials, in a penalty not less than Fifty Thousand Dollars ($50,000.00). The bond premium for each constable shall be paid from the general county fund of the respective counties. The board of supervisors of the county may at any time require such additional sum as it deems necessary.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 4 (1); 1857, ch. 6, art 174; 1871, § 278; 1880, § 387; 1892, § 768; 1906, § 830; Hemingway's 1917, § 636; 1930, § 631; 1942, § 3886; Laws; Laws, 1986, ch. 458, § 18; Laws, 2009, ch. 467, § 5, eff from and after July 1, 2009.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 19-19-3 would stand repealed from and after October 1, 1989. Subsequently, Laws, 1986, chapter 458, § 48, was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

Cross References — Form of oath of office, see Miss. Const. Art. 14, § 268.

Who may administer oath of office, see § 25-1-9.

Filing oath of office, see § 25-1-11.

How bonds of county officers are to be approved, see § 25-1-19.

When constable may make personal bond, see § 25-1-31.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 6, 18.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 46 (complaint, petition, or declaration against constable and his sureties for illegal sale of mortgaged personal property on execution).

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 131 (complaint, petition, or declaration against constable and his surety for false arrest and imprisonment, battery, and malicious prosecution).

§ 19-19-5. General duties of constables; training program.

(1) It shall be the duty of every constable to keep and preserve the peace within his county, by faithfully aiding and assisting in executing the criminal laws of the state; to give information, without delay, to some justice court judge or other proper officer, of all riots, routs and unlawful assemblies, and of every violation of the penal laws which may come to his knowledge in any manner whatsoever; to execute and return all process, civil and criminal, lawfully directed to him, according to the command thereof; and to pay over all monies, when collected by him to the person lawfully authorized to receive the same. In

addition, the constable is authorized to serve process issued by any county, chancery or circuit court, and shall receive the same fee as he would receive for service of process in justice court. No constable shall receive any fee provided by law for making an arrest, or attending any trial, wherein the defendant has been arrested, or is being tried for any violation of the motor vehicle laws committed on any designated United States highway located within the district or county of the constable.

(2)(a) During a constable's term of office, each constable shall attend and, to the extent to which he is physically able, participate in a curriculum having a duration of two (2) weeks which addresses the nature and scope of specific duties and responsibilities of a constable and which includes firearm use and safety training, to be established by the Board on Law Enforcement Officers Standards and Training in the field of law enforcement at the Mississippi Law Enforcement Officers' Training Academy or such other training programs that are approved by the Board on Law Enforcement Officers Standards and Training pursuant to Section 45-6-9. No physical fitness test shall be required to be successfully completed in order to complete the training program.

The board of supervisors of the county shall be responsible for paying, only one (1) time, the tuition, living and travel expenses incurred by any constable of that county in attendance at such training program or curriculum. If such constable does not attend and, to the extent to which he is physically able, participate in the entirety of the required program or curriculum, any further training which may be required by this section shall be completed at the expense of such constable. No constable shall be entitled to the receipt of any fees, costs or compensation authorized by law after the first twenty-four (24) months in office if he fails to attend the required training and, to the extent to which he is physically able, participate in the entirety of the appropriate program or curriculum. Any constable who does not complete the required training when required may execute and return civil process but thereafter shall not be paid any fees, costs or compensation for executing such process and shall not be allowed to exercise any law enforcement functions or to carry a firearm in the performance of his duties until he has completed such training.

(b)(i) The Board of Law Enforcement Officers Standards and Training shall develop a program of continuing education training for constables to attend consisting of eight (8) hours annually. The program shall be divided equally between firearms training and safety and instruction in both substantive and procedural law. The training program shall be conducted by the Mississippi Constables Association, and appropriate parts of the program may be conducted by members who have been certified by the board to conduct the training program. The cost of travel, tuition and living expenses in attending the continuing training shall be paid out of the Law Enforcement Officers Training Fund created in Section 45-6-15.

(ii) No constable elected prior to January 1, 2000, shall be required to comply with the continuing education requirements of this paragraph (b);

however, any constable may elect to attend the annual training and shall be reimbursed therefor as provided in this paragraph (b).

(c) The provisions of this subsection shall not apply to a constable who has received a certificate from the Board on Law Enforcement Officers Standards and Training evidencing satisfaction of subsections (3) and (4) of Section 45-6-11, or who is exempt from the requirements of subsections (3) and (4) of Section 45-6-11 by the provisions of subsection (1).

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 4 (3); 1857, ch. 6, art 176; 1871, § 280; 1880, § 389; 1892, § 769; 1906, § 831; Hemingway's 1917, § 637; 1930, § 632; 1942, § 3887; Laws, 1962, ch. 330; Laws, 1986, ch. 441, § 3; Laws, 1989, ch. 586, § 1; Laws, 1993, ch. 343, § 1; Laws, 2000, ch. 578, § 1; Laws, 2003, ch. 320, § 1, eff from and after July 1, 2003.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2)(c) by substituting "subsections (3) and (4) of Section 45-6-11" for "subsections (2) and (3) of Section 45-6-11" both times it appears. The Joint Committee ratified the correction at its August 16, 2012, meeting.

Editor's Note — Laws, 1989, ch. 568 was not signed by the Governor, and became law, subject to preclearance requirements of the Voting Rights Act, on April 25, 1989. On July 24, 1989, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1989, ch. 568, § 1.

On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 578.

Cross References — Requirement that justice of the peace direct process to constable, see § 11-9-107.

How executions shall be issued and returned, see § 13-3-113.

Penalty for neglect of duty, see §§ 19-19-15, 97-11-37.

Submission of training program for constables, see § 19-19-6.

Fees, see § 25-7-27.

Duty to assist in enforcement of Tobacco Tax Law of 1934, see § 27-69-67.

Duties imposed on sheriffs and constables by the Mississippi Code of Military Justice and penalties for failure to perform, see § 33-13-623.

Board on Law Enforcement Officer Standards and Training generally, see §§ 45-6-5 through 45-6-9.

Mississippi Law Enforcement Officers' Training Academy generally, see §§ 45-5-1 et seq.

Arrest tickets, see § 63-9-21.

Penalty for failure to return person committing offense in constable's view, see § 97-11-35.

Authority to make arrests, see § 99-3-1.

Duty to give information concerning vagrants, see § 99-29-1.

JUDICIAL DECISIONS

1. In general.

While Miss. Code Ann. § 37-7-321 and Miss. Code Ann. § 37-7-323 allowed schools to retain independent contractors to work as peace officers on school grounds, the legislature however did not provide an express grant of immunity to those independent contractors under Miss. Code Ann. § 19-19-5 or the Mississippi Tort Claims Act (MTCA), Miss. Code

Ann. § 11-46-9; accordingly, the trial court erred in finding that the security contractor was immune to suit by virtue of the MTCA. Knight v. Terrell, 961 So. 2d 30 (Miss. 2007).

A constable who did not begin pursuit of defendant motorist until after the defendant had driven away at such a fast rate of speed his companions became alarmed for their safety was not engaged in an illegal attempt to arrest him. Shinall v. State, 199 So. 2d 251 (Miss. 1967), cert. denied, 389 U.S. 1014, 88 S. Ct. 590, 19 L. Ed. 2d 660 (1967), overruled on other grounds, Flowers v. State, 473 So. 2d 164 (Miss. 1985).

Habeas corpus is not the proper remedy for determining whether, in view of this statute, a constable is entitled to costs for attending the trial of one charged as a traffic law violator. Murry v. Waller, 246 Miss. 396, 149 So. 2d 524 (1963).

Constable cannot go beyond confines of his district and serve process. Boutwell v. Grayson, 118 Miss. 80, 79 So. 61 (1918).

A seizure and sale by a town marshal acting as constable without the limits of the town and supervisors' district in which the town is situated under a distress warrant issued by the mayor of such town are invalid and convey no title upon a purchaser at the sale. Riley v. James, 73 Miss. 1, 18 So. 930 (1895).

ATTORNEY GENERAL OPINIONS

Although there is no express prohibition to serving as both constable and deputy sheriff, one who accepts such responsibilities must fully fulfill all obligations of both offices, and cannot perform duties of constable while on duty as deputy sheriff or vice versa; he or she will be entitled to constable service fees only when performing services directed to him or her as constable, and those services must be performed when he or she is not on duty as deputy sheriff. Dulaney, Sept. 23, 1992, A.G. Op. #92-0623.

While equal distribution of civil process to constables is ideal, it is not mandatory; clerk may distribute process in any manner so long as clerk can articulate rational reason why process is being distributed in manner chosen. McCarty, July 8, 1992, A.G. Op. #92-0517.

1993 amendment to Miss. Code Section 19-19-5 provides that any constable who does not complete required training before January 1, 1994, may execute and return civil process, but thereafter shall not be paid any fees, costs or compensation therefor; constable who has not yet been to training school may be paid fees up to twenty-four months after first taking office. Weissinger, May 26, 1993, A.G. Op. #93-0352.

Legislature intended to authorize new chance for constables who were unable to complete earlier more stringent course and to authorize boards of supervisors to pay for course, regardless of what had occurred under previous, and now repealed, statutes. Welch Oct. 21, 1993, A.G. Op. #93-0704.

If a constable has been in office more than twenty-four months, as provided in Section 45-6-11, the statute would preclude a county from compensating a constable for fees generated under Section 25-7-27(e), for serving warrants and other process, attending all trials in state cases in which the state fails in the prosecution, prior to satisfying the training requirement of Section 19-19-5(2). Carroll, February 16, 1995, A.G. Op. #95-0072.

Under Section 19-19-5, a constable is not entitled to a fee for a traffic citation written for violation on a designated United States highway. Davis, July 12, 1996, A.G. Op. #96-0466.

If a school board designates an off-duty law enforcement officer as a peace officer pursuant to §§ 37-7-321 and 37-7-323, then the school district imbues the security guard with the powers and authority of a constable, which is a law enforcement officer under § 19-19-5; as a law enforcement officer, this peace officer would be entitled to certain immunities from some federal and state claims. Thompson, June 25, 1999, A.G. Op. #99-0316.

A constable has no official obligation to accompany a citizen to retrieve personal property unless a complaint has been filed with a court of competent jurisdiction and the court has ordered the constable to accompany the citizen; however, a constable has the duty to keep the peace and may at any time respond to a breach or attempted breach of the peace; a constable may, therefore accompany the citizen as a service, but without a court order, the constable has no official obligation prior to a confrontation occurring. Enlow, June 30, 2000, A.G. Op. #2000-0349.

When a constable issues a traffic citation to an individual and that individual is found to be guilty of the offense and subsequently pays his fine, the constable is entitled to a $35.00 fee. Aldridge, Mar. 31, 2005, A.G. Op. 05-0046.

Constables have authority to investigate both felonies and misdemeanors. Smith, Aug. 11, 2006, A.G. Op. 06-0310.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 20 et seq.

CJS. 80 C.J.S., Sheriffs and Constables § 34.

§ 19-19-6. Training programs for constables.

On or before January 7, 1990, the Board on Law Enforcement Officers Standards and Training shall submit to the Mississippi State Legislature a proposal describing the training program required by Section 19-19-5, which is specifically designed for the training of constables. The proposal shall set forth in detail the nature and scope of the curriculum and time period of training for constables, with due consideration being given to the specific duties and responsibilities of constables.

SOURCES: Laws, 1989, ch. 586, § 2, eff from and after January 1, 1992 (the date the United States Attorney General interposed no objection to this enactment).

Editor's Note — Laws, 1989, ch. 568 was not signed by the Governor, and became law, subject to preclearance requirements of the Voting Rights Act, on April 25, 1989. On July 24, 1989, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1989, ch. 568, § 1.

§ 19-19-7. Constable to attend justices' court.

It shall be the duty of the constable to attend the justices' courts of his district, and to obey their lawful orders. He shall execute all judgments of said courts in any criminal case before them.

SOURCES: Codes, 1880, § 393; 1892, § 773; 1906, § 835; Hemingway's 1917, § 641; 1930, § 636; 1942, § 3891.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Requirement that justice of the peace direct process to constable, see § 11-9-107.

ATTORNEY GENERAL OPINIONS

Based on Sections 25-7-27(e) and 19-19-7, a constable has a duty to attend both the criminal and civil cases in justice court in his district. However, a constable may be compensated with a per diem as provided under Section 25-3-69 when the constable serves as a bailiff in civil cases only. No similar provision exists that would provide compensation to the constable for serving as bailiff in a criminal case. Thompson, September 6, 1996, A.G. Op. #96-0606.

A constable should attend justice court; however, the constable should only serve as bailiff for justice court if ordered to do so by the justice court judge since justice court judges may choose whom they wish to serve as bailiff of their court, which may include a constable from another district within the county or a deputy sheriff if the sheriff, with permission of the judge, assigns such a deputy to bailiff duty. McCormack, November 6, 1998, A.G. Op. #98-0678.

There is no authority for a municipal police officer to serve as bailiff of the justice court, since this is not a proper municipal function. McCormack, November 6, 1998, A.G. Op. #98-0678.

A constable still has an obligation to attend Justice Court even if he is not serving as bailiff. Aldridge, December 18, 1998, A.G. Op. #98-0738.

§ 19-19-8. Compensation for constable serving as justice court bailiff.

A constable that serves as a bailiff in justice court for criminal cases may be paid by the county in an amount equal to the allowance paid to riding bailiffs as provided in Section 19-25-31.

SOURCES: Laws, 2007, ch. 588, § 2, eff from and after passage (approved Apr. 21, 2007); reenacted and amended, Laws, 2009, ch. 417, § 1, eff August 7, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment and amendment of this section.)

Editor's Note — By letter dated August 7, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment and amendment of this section by Laws, 2009, ch. 417, § 1.

§ 19-19-9. Effect of failure to execute and return execution.

If any constable or other officer fail to execute and return, according to law, any execution to him directed by any justice of the peace, on or before the return day thereof, the plaintiff in execution may recover the amount thereof, with interest and costs and five per centum damages thereon, by motion before the justice to whom the execution was returnable, against the officer and his sureties. When any constable, or such other officer, or his sureties, shall have paid the amount of money and damages recovered, the original judgment shall be vested in the person so paying. The justice, on motion, may fine the officer not exceeding Fifty Dollars ($50.00) for failing to return such execution.

SOURCES: Codes, Hutchinson's 1848, ch 50, art 4 (5); 1857, ch. 6, art 178; 1870, § 282; 1880, § 390; 1892, § 770; 1906, § 832; Hemingway's 1917, § 638; 1930, § 633; 1942, § 3888.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Penalty for refusal to execute process directing arrest or confinement, see § 97-9-39.

Penalty for failure to return person committing offense in constable's view, see § 97-11-35.

ATTORNEY GENERAL OPINIONS

Plaintiff is not entitled to refund of prepaid court costs where constable fails to serve process because of insufficient information provided by plaintiff; if constable executes service on wrong address supplied by plaintiff, constable is entitled to his or her fee. Fortenberry, Oct. 14, 1992, A.G. Op. #92-0791.

Rule that constable is entitled to payment from plaintiff when he executes service on address provided from plaintiff and address turns out to be incorrect applies when plaintiff is tax collector; however, on process returned "not found" constable has not executed service and would not be entitled to fee. Gex, July 16, 1992, A.G. Op. #92-0419.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 24.

CJS. 80 C.J.S., Sheriffs and Constables §§ 116-135.

§ 19-19-11. Effect of failure to pay money on execution.

If any constable or other officer shall collect or receive any money by virtue of an execution issued by a justice of the peace, and shall not pay the same over, on demand to the plaintiff in execution, or other person authorized to receive the same, the plaintiff, or other person authorized to receive the same, may recover the amount thereof, with interest and costs and twenty-five per centum damages, by motion before the justice of the peace against the officer and his sureties.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 4 (6); 1857, ch. 6, art 179; 1871, § 283; 1880, § 391; 1892, § 771; 1906, § 833; Hemingway's 1917, § 639; 1930, § 634; 1942, § 3889.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Resolution and notice of issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-107.

Penalty on sheriff or other officer who fails to pay over money collected by execution, see § 19-25-45.

Embezzlement by county officer, see § 97-11-25.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 41.

§ 19-19-13. Liability for false return.

If any constable or other officer make a false return on any execution or other process issued by a justice of the peace, such officer shall forfeit and pay the sum of Two Hundred Dollars ($200.00), to be recovered against such officer and his sureties by motion before the justice by whom such process was issued, for the use of the party injured by said false return.

SOURCES: Codes, 1857, ch. 6, art 180; 1871, § 284; 1880, § 392; 1892, § 772; 1906, § 834; Hemingway's 1917, § 640; 1930, § 635; 1942, § 3890.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — False return made by sheriff or other officer, see § 19-25-47.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 44.

CJS. 80 C.J.S., Sheriffs and Constables §§ 118-127.

§ 19-19-15. Penalty for neglect of duty.

A constable who shall fail to discharge any of the duties required of him, when no other penalty is provided for such failure, shall be liable to be fined, as for a contempt, not exceeding Fifty Dollars ($50.00) by the justice of the peace before whom the proceedings may be pending.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 4 (8); 1857, ch. 6 art 182; 1871, § 286; 1880, § 395; 1892, § 774; 1906, § 836; Hemingway's 1917, § 642; 1930, § 637; 1942, § 3892.

Editor's Note — Pursuant to Mississippi Constitution, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Duties of constables generally, see § 19-19-5.

Penalty for permitting escape of prisoners, see § 97-9-39.

General penalty for failure to perform duty, see § 97-11-37.

Penalty for gambling, see § 97-33-3.

CHAPTER 21

Coroners

In General. [Repealed]
Provisions Applicable Where Coroner is Medical Doctor. [Repealed]
Mississippi Coroner Reorganization Act 19-21-101

IN GENERAL
[REPEALED]

Sec.
19-21-1 through 19-21-35. Repealed

§§ 19-21-1 through 19-21-35. Repealed.

Repealed by Laws of 1986, ch. 459, § 44, eff from and after July 1, 1986.

§ 19-21-1. [Codes, Hutchinson's 1848, ch. 29, art 3 (1); 1857, ch. 6, art 138; 1871, § 244; 1880, § 350; 1892, § 815; 1906, § 880; Hemingway's 1917, § 4047; 1930, § 638; 1942, § 3893]

§ 19-21-3. [Codes, Hutchinson's 1848, ch. 29, art 3 (15); 1857, ch. 6, art 151; 1871, § 257; 1880, § 363; 1892, § 828; 1906, § 893; Hemingway's 1917, § 4060; 1930, § 651; 1942, § 3906; Laws, 1938, ch. 296]

§ 19-21-5. [Codes, Hutchinson's 1848, ch. 29, art 3 (17); 1857, ch. 6, art 153; 1871, § 259; 1880, § 365; 1892, § 830; 1906, § 895; Hemingway's 1917, § 4062; 1930, § 653; 1942, § 3908; Laws, 1950, ch. 345]

§ 19-21-7. [Codes, Hutchinson's 1848, ch. 29, art 3 (19); 1857, ch. 6, art 154; 1871, § 260; 1880, § 366; 1892, § 831; 1906, § 896; Hemingway's 1917, § 4063; 1930, § 654; 1942, § 3909]

§ 19-21-9. [Codes, 1857, ch. 6, art 152; 1871, § 258; 1880, § 364; 1892, § 829; 1906, § 894; Hemingway's 1917, § 4061; 1930, § 652; 1942, § 3907]

§ 19-21-11. [Codes, Hutchinson's 1848, ch. 29, art 3 (3); 1857, ch. 6, art 139; 1871, § 245; 1880, § 351; 1892, § 816; 1906, § 881; Hemingway's 1917, § 4048; 1930, § 639; 1942, § 3894; Laws, 1894, ch. 60; Laws, 1956, ch. 250]

§ 19-21-13. [Codes, Hutchinson's 1848, ch. 29, art 3 (4); 1857, ch. 6, art 140; 1871, § 246; 1880, § 352; 1892, § 817; 1906, § 882; Hemingway's 1917, § 4049; 1930, § 640; 1942, § 3895]

§ 19-21-15. [Codes, Hutchinson's 1848, ch. 29, art 3 (8); 1857, ch. 6, art 141; 1871, § 247; 1880, § 353; 1892, § 818; 1906, § 883; Hemingway's 1917, § 4050; 1930, § 641; 1942, § 3896]

§ 19-21-17. [Codes, Hutchinson's 1848, ch. 29, art 3 (6); 1857, ch. 6, art 142; 1871, § 248; 1880, § 354; 1892, § 819; 1906, § 884; Hemingway's 1917, § 4051; 1930, § 642; 1942, § 3897]

§ 19-21-19. [Codes, Hutchinson's 1848, ch. 29, art 3 (5); 1857, ch. 6, art 143; 1871, § 249; 1880, § 355; 1892, § 820; 1906, § 885; Hemingway's 1917, § 4052; 1930, § 643; 1942, § 3898]

§ 19-21-21. [Codes, Hutchinson's 1848, ch. 29, art 3 (7); 1857, ch. 6, art 144; 1871, § 250; 1880, § 356; 1892, § 821; 1906, § 886; Hemingway's 1917, § 4053; 1930, § 644; 1942, § 3899]

§ 19-21-23. [Codes, Hutchinson's 1848, ch. 29, art 3 (9); 1857, ch. 6, art 145; 1871, § 251; 1880, § 357; 1892, § 822; 1906, § 887; Hemingway's 1917, § 4054; 1930, § 645; 1942, § 3900]

§ 19-21-25. [Codes, Hutchinson's 1848, ch. 29, art 3 (10); 1857, ch. 6, art 146; 1871, § 252; 1880, § 358; 1892, § 823; 1906, § 888; Hemingway's 1917, § 4055; 1930, § 646; 1942, § 3901]

§ 19-21-27. [Codes, 1857, ch. 6, art 148; 1871, § 254; 1880, § 360; 1892, § 825; 1906, § 890; Hemingway's 1917, § 4057; 1930, § 648; 1942, § 3903]

§ 19-21-29. [Codes, 1857, ch. 6, art 147; 1871, § 253; 1880, § 359; 1892, § 824; 1906, § 889; Hemingway's 1917, § 4056; 1930, § 647; 1942, § 3902; Laws, 1950, ch. 324; Laws, 1970, ch. 412, § 1, eff from and after passage (approved April 3, 1970)]

§ 19-21-31. [Codes, 1857, ch. 6, art 149; 1871, § 255; 1880, § 361; 1892, § 826; 1906, § 891; Hemingway's 1917, § 4058; 1930, § 649; 1942, § 3904]

§ 19-21-33. [Codes, Hutchinson's 1848, ch. 29, art 4; 1857, ch. 6, art 150; 1871, § 256; 1880, § 362; 1892, § 827; 1906, § 892; Hemingway's 1917, § 4059; 1930, § 650; 1942, § 3905]

§ 19-21-35. [En Laws, 1977, ch. 369]

Editor's Note — Former § 19-21-1 related to oath of office, bond, and performance of duties of county ranger.

Former § 19-21-3 related to performance of duties of county sheriff.

Former § 19-21-5 related to appointment of deputy.

Former § 19-21-7 related to maintenance of jail by coroner when sheriff a prisoner.

Former § 19-21-9 related to remedy on bond.

Former § 19-21-11 related to coroner's inquest generally.

Former § 19-21-13 related to duty of sheriffs and constables as to precept for inquest.

Former § 19-21-15 related to issuance of subpoenas for and swearing of witnesses at inquests.

Former § 19-21-17 related to oath of jurors at inquest.

Former § 19-21-19 related to penalties pertaining to inquests.

Former § 19-21-21 related to charge to the jury of inquest.

Former § 19-21-23 related to arrest of person found guilty of felonious homicide.

Former § 19-21-25 related to reduction to writing of material evidence and requiring of bond of material witnesses in felonious homicide cases.

Former § 19-21-27 related to filing with the clerk of the circuit court of record of inquests.

Former § 19-21-29 related to medical or surgical witnesses at inquests.

Former § 19-21-31 related to conduct of inquests when coroner unavailable.

Former § 19-21-35 related to the purchase of two-way radio equipment for coroners. For similar provisions, see § 41-61-79.

PROVISIONS APPLICABLE WHERE CORONER IS MEDICAL DOCTOR [REPEALED]

SEC.
19-21-51 through 19-21-71. Repealed

§§ 19-21-51 through 19-21-71. Repealed.

Repealed by Laws of 1986, ch. 459, § 44, eff from and after July 1, 1986.

§ 19-21-51. [Codes, 1942, §§ 3909-01, 3909-05, 3909-13; Laws, 1968, ch. 518, §§ 1, 5, 13, eff from and after September 1, 1968]

§ 19-21-53. [Codes, 1942, § 3909-02; Laws, 1968, ch. 518, § 2, eff from and after September 1, 1968]

§ 19-21-55. [Codes, 1942, § 3909-03; Laws, 1968, ch. 518, § 3; Laws, 1971, ch. 369, § 1, eff from and after March 16, 1971]

§ 19-21-57. [Codes, 1942, §§ 3909-03, 3909-04; Laws, 1968, ch. 518, §§ 3, 4; Laws, 1971, ch. 369, § 1, eff from and after March 16, 1971]

§ 19-21-59. [Codes, 1942, § 3909-06; Laws, 1968, ch. 518, § 6, eff from and after September 1, 1968]

§ 19-21-61. [Codes, 1942, § 3909-07; Laws, 1968, ch. 518, § 7, eff from and after September 1, 1968]

§ 19-21-63. [Codes, 1942, § 3909-08; Laws, 1968, ch. 518, § 8, eff from and after September 1, 1968]

§ 19-21-65. [Codes, 1942, § 3909-11; Laws, 1968, ch. 518, § 11, eff from and after September 1, 1968]

§ 19-21-67. [Codes, 1942, § 3909-09; Laws, 1968, ch. 518, § 9, eff from and after September 1, 1968]

§ 19-21-69. [Laws, 1968, ch. 518, § 10, eff from and after September 1, 1968].

§ 19-21-71. [Codes, 1942, § 3909-12; Laws, 1968, ch. 518, § 12, eff from and after September 1, 1968]

Editor's Note — Former § 19-21-51 related to laws applicable in counties having coroner who is medical doctor.

Former § 19-21-53 related to election, oath of office, and bond of doctor-coroner.

Former § 19-21-55 related to transfer of ranger's duties to sheriff.

Former § 19-21-57 related to authority and duties of doctor-coroner.

Former § 19-21-59 related to appointment, qualifications, and bond of deputies.

Former § 19-21-61 related to removal of body without authorization of doctor-coroner.

Former § 19-21-63 related to transportation of dead body to place of examination.

Former § 19-21-65 related to requirement of an autopsy or investigation.

Former § 19-21-67 related to performance of and consent to autopsy or postmortem examination.

Former § 19-21-69 related to confidentiality of doctor-coroner's report, requirement of testimony by doctor-coroner, and inadmissibility of evidence derived from autopsy.

Former § 19-21-71 related to fees.

MISSISSIPPI CORONER REORGANIZATION ACT

SEC.

19-21-101. Short title.
19-21-103. Qualifications of candidate for office.
19-21-105. Elected coroner required to attend Mississippi Crime Laboratory and State Medical Examiner Death Investigation Training School; oath of office.
19-21-107. Appointment of successor to serve in office of coroner.
19-21-109. Transfer of duties from county ranger to sheriff of county.

§ 19-21-101. Short title.

Sections 19-21-101 through 19-21-109 shall be known and cited as the "Mississippi Coroner Reorganization Act of 1986."

SOURCES: Laws, 1986, ch. 459, § 1, eff from and after July 1, 1986.

Cross References — Mississippi Medical Examiners Act of 1986, see §§ 41-61-51 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 19-21-103. Qualifications of candidate for office.

(1) Beginning with the 1987 general election and thereafter, each candidate for the elected office of coroner shall, as a minimum, possess a high school graduation diploma or its equivalent, be twenty-one (21) years of age or older, and be a qualified elector of the county in which elected.

(2) The minimum education requirements of subsection (1) of this section and subsection (1) of Section 41-61-57 shall not apply to any coroner holding office on July 1, 1986, who is reelected in the 1987 general election and thereafter, as long as such coroner maintains continuous active service as county medical examiner or county medical examiner investigator. However, all other portions of subsection (1) of Section 41-61-57 shall apply to such coroners.

SOURCES: Laws, 1986, ch. 459, § 2, eff from and after July 1, 1986.

Cross References — Term of office, see Miss. Const. Art. 5, § 135.

Manner of selection, see Miss. Const. Art. 5, § 138.

Election at general state election, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 2, 5, 6.

CJS. 18 C.J.S., Coroners and Medical Examiners §§ 2, 3.

§ 19-21-105. Elected coroner required to attend Mississippi Crime Laboratory and State Medical Examiner Death Investigation Training School; oath of office.

(1) Each coroner elected in the 1987 general election and thereafter shall attend the Mississippi Crime Laboratory and State Medical Examiner Death Investigation Training School provided for in subsection (5) of Section 41-61-57, and shall successfully complete subsequent testing on the subject material

prior to taking the oath of office. If the elected coroner fails to successfully complete the school and testing, he shall not be eligible to take the oath of office.

(2) Upon successful completion of the death investigation training school, the coroner shall take the oath of office, and he then shall be designated the chief county medical examiner or chief county medical examiner investigator, as provided in subsection (2) of Section 41-61-57, and shall perform the duties of such office as required by law.

SOURCES: Laws, 1986, ch. 459, § 3, eff from and after July 1, 1986.

Cross References — Form of oath, see Miss. Const. Art. 14, § 268.

Election at general state election, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Vacancies in public offices generally, see § 25-1-7.

Who can administer oath of office, see § 25-1-9.

ATTORNEY GENERAL OPINIONS

There is no provision for a coroner to use flashing blue lights, however, pursuant to § 41-61-79, he may use emergency flashing red lights on his vehicle which shall be considered an emergency vehicle, when in the actual performance of his duties. Adams, Feb. 20, 2004, A.G. Op. 04-0056.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners § 6.

§ 19-21-107. Appointment of successor to serve in office of coroner.

In the absence of an individual to serve in the office of coroner, there shall immediately be appointed a successor in the manner provided by law.

SOURCES: Laws, 1986, ch. 459, § 4, eff from and after July 1, 1986.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 1 et seq.

CJS. 18 C.J.S., Coroners and Medical Examiners § 2.

§ 19-21-109. Transfer of duties from county ranger to sheriff of county.

The duties of the county ranger, heretofore exercised by the coroner, shall be transferred to the sheriff of the county, who shall have all the duties and powers of the ranger's office.

SOURCES: Laws, 1986, ch. 459, § 5, eff from and after July 1, 1986.

Cross References — Authority and duties of rangers in relation to estrays, see §§ 69-13-319 et seq.

CHAPTER 23

County Attorneys

Sec.
19-23-1. County prosecuting attorney.
19-23-3. Election to establish or abolish office of county prosecuting attorney.
19-23-5. Supervisors may reestablish office.
19-23-7. Governor to make appointment to reestablished office.
19-23-9. Qualifications.
19-23-11. Duties.
19-23-13. County prosecuting attorney not to defend criminal cases in county.
19-23-15. County prosecuting attorney may be attorney for supervisors.
19-23-17. Justice court judges to arrange dates of courts with county prosecuting attorney.
19-23-19. Secretarial assistance.
19-23-21. Appointment of assistant county attorney in certain counties.

§ 19-23-1. County prosecuting attorney.

There shall be, in the counties where such an office now exists, a county prosecuting attorney, elected in the county at each general election for state and county officers. The several counties in the state shall have the right to come from under and within the provisions of this chapter in the manner hereinafter provided.

SOURCES: Codes, Hemingway's 1917, § 691; Laws, 1916, ch. 238; 1930, § 4220; 1942, § 3910.

Cross References — Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291.

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Salaries of county prosecuting attorneys, see § 25-3-9.

ATTORNEY GENERAL OPINIONS

County prosecuting attorney may represent county in civil forfeiture proceedings; compensation to be paid to county attorney for such services would have to be included in county attorney's salary. Swayze Sept. 7, 1993, A.G. Op. #93-0533.

RESEARCH REFERENCES

ALR. Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law. 6 A.L.R.3d 562.

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys §§ 1 et seq.

§ 19-23-3. Election to establish or abolish office of county prosecuting attorney.

The board of supervisors of any county, when requested thereto by a petition signed by twenty percent (20%) of the qualified electors of that county asking for an election to determine whether or not the office of county prosecuting attorney shall be established or abolished, shall order an election to be held not less than sixty days from the first meeting of the board after the petition is filed, at which election the qualified electors of the county shall vote for or against the office of county prosecuting attorney. The expense of said election shall be paid out of the county treasury. It shall be the duty of the election commissioners to furnish to the managers of the election, ballots upon which shall be written the following: "For County Prosecuting Attorney's Office," "Against County Prosecuting Attorney's Office," and all laws now in force governing general elections shall apply to the special elections herein provided for. If it shall appear that a majority of the qualified electors voting on this question shall vote against the county prosecuting attorney's office, the office shall be abolished or not established, as the case may be. No election concerning the establishing or abolishing of the county prosecuting attorney's office shall be held less than two years from the date on which the office was established or abolished, as provided for in this section, and less than two years after a county attorney shall have been elected to fill the said office.

SOURCES: Codes, Hemingway's 1917, § 692; Laws, 1916, ch. 238; 1930, § 4221; 1942, § 3911.

Cross References — Appointment of special prosecutor in counties where office of county attorney is abolished, see § 19-3-49.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 3911] does not authorize a taxpayer or qualified elector to contest an election abolishing the office of county attorneys. Jones v. Election Comm'rs, 187 Miss. 636, 193 So. 3 (1940).

A similar statute has been declared constitutional. Board of Election Comm'rs v. Davis, 102 Miss. 497, 59 So. 811 (1912).

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys §§ 1 et seq.

§ 19-23-5. Supervisors may reestablish office.

The board of supervisors of any county where the county prosecuting attorney's office has been abolished may by its own motion entered upon the minutes, make an order to reestablish the said office of county prosecuting attorney in said county. Said order shall be published in a newspaper published in said county and having a general circulation therein, and if there is no such newspaper in said county, the said order shall be posted in three public places of said county, and one of the said places shall be the courthouse, for three consecutive weeks next preceding, and if within that time twenty percent (20%) of the qualified electors of the county shall petition against re-creation of said office, then the said office shall not be re-created, unless an election shall have been ordered in the manner provided for in Section 19-23-3, and a majority of the qualified voters in said election vote to re-create said office. The said board shall not re-create said office unless two years after the same has been abolished shall have passed. Should there be no petition against the re-creation of said office, the board of supervisors shall re-create said office of county prosecuting attorney.

SOURCES: Codes, Hemingway's 1917, § 693; 1930, § 4222; 1942, § 3912; Laws, 1916, ch. 238.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-23-7. Governor to make appointment to reestablished office.

Should the county prosecuting attorney's office be re-created under Section 19-23-5, then the Governor shall appoint an attorney, whose term of office shall be until the next general election, whether the same be held for the election of congressmen, judges or other officers, when said county attorney's office shall be filled by election and whose term of office shall be until the next general election for state and county officers, or until the office is abolished as provided for in Section 19-23-3.

SOURCES: Codes, Hemingway's 1917, § 694; 1930, § 4223; 1942, § 3913; Laws, 1916, ch. 238.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys §§ 4-11.

§ 19-23-9. Qualifications.

The county prosecuting attorney shall possess all the qualifications of other county officers, and in addition thereto shall be a regular licensed and practicing lawyer.

SOURCES: Codes, Hemingway's 1917, § 695; Laws, 1916, ch. 238; 1930, § 4224; 1942, § 3914.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys §§ 1, 8.

§ 19-23-11. Duties.

(1) The county prosecuting attorney shall appear and represent the state in all investigations for felony before the various justice court judges in his county. He shall also appear before justice court judges and prosecute all cases against persons charged with offenses therein. The county prosecuting attorney shall be the prosecuting attorney for the county court and shall prosecute all state criminal cases therein, and he shall represent the state in criminal cases appealed from the county court to the circuit court.

(2) The county prosecuting attorney may assist the district attorney in all criminal cases and in all civil cases where the services of the district attorney are required in which the state, his county or any municipality of his county is interested.

(3) The county prosecuting attorney may present any matter to the grand jury of his county.

(4) The county prosecuting attorney shall have full responsibility for all misdemeanors, youth court proceedings, and all other cases not specifically granted to the district attorney. Provided, however, that in any municipality having a municipal youth court, the municipal prosecutor shall have responsibility for youth court matters in that court.

Where any statute of this state confers a jurisdiction, responsibility, duty, privilege or power upon a county attorney or county prosecuting attorney, either solely, jointly or alternatively with a district attorney, such county prosecuting attorney shall be responsible for the prosecution, handling, appearance, disposition or other duty conferred by such statute. Any such provision shall not be construed to bestow such responsibility, jurisdiction or power upon the district attorney where there is no elected county prosecuting attorney, and any such matter shall be handled pursuant to subsection (8) of this section.

(5) In any case handled by the county prosecuting attorney pursuant to this section which subsequently results in charges being modified in such a manner that the case would be within the jurisdiction of the district attorney pursuant to Section 25-31-11, the responsibility for prosecution shall be transferred to the district attorney. The county prosecuting attorney shall report to the district attorney the disposition of all affidavits, crimes, occurrences or arrests handled by him wherein any person is charged with a crime for which a conviction may result in imprisonment in the State Penitentiary.

(6) The validity of any judgment or sentence shall not be affected by the division of jurisdiction under this section, and no judgment or sentence may be reversed or modified upon the basis that the case was not processed according to subsection (5) of this section.

(7) A county prosecuting attorney may be designated by the district attorney to appear on behalf of the district attorney pursuant to an agreement

relating to appearances in certain courts or proceedings in the county of the county prosecuting attorney. Such agreement shall be filed with the circuit court clerk of any county where such agreement shall be operative. Such agreement shall be binding upon the district attorney and county prosecuting attorney or municipal prosecuting attorney until dissolved by either of them in writing upon five (5) days' notice.

(8) In the event that there is no elected county prosecuting attorney serving in a county, the prosecution of such cases shall be handled by a county attorney employed by the board of supervisors of such county pursuant to Section 19-3-49.

SOURCES: Codes, Hemingway's 1917, §§ 696, 697; Laws, 1916, ch. 238; 1930, §§ 4225, 4226; 1942, §§ 3915, 3916; Laws, 1978, ch. 509, § 3; Laws, 1985, ch. 518, § 19, eff from and after July 1, 1985.

Cross References — County prosecuting attorney serving as prosecuting attorney of county court, see § 9-9-31.

Appeal from assessment of taxes, see § 11-51-77.

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Duty of county prosecuting attorney to advise inquiring electors concerning provisions of law for removal of public officials from office, see § 25-5-7.

Duty to bring proceedings to abate nuisance declared by state board of health, see § 41-23-13.

Prosecution of laws regulating poisonous substances, see § 41-29-17.

Duty to provide information on prisoners eligible for parole, see § 47-7-19.

Duty to prosecute or defend all causes arising under the provisions of game and fish laws, see § 49-5-45.

Duty to assist Attorney General in consumer protection actions, see § 75-24-21.

Injunctions to prohibit violations of the Electric Power Association Law, see § 77-5-509.

Authority to abate and enjoin nuisances generally, see § 95-3-5.

Authority to inspect statements required of person, firm or corporation transporting alcohol or wine in state, see § 99-27-31.

JUDICIAL DECISIONS

1. In general.

County attorney may not represent in any way, shape, form, or fashion any person or firm which has been, is or may potentially be subject to investigation for wrongdoing; only advice county attorney may ethically give such person is to get another lawyer. County attorney who accepts employment in civil matter which attorney knows involves issues and parties that will likely later become subject of criminal proceeding will be publicly reprimanded and be required to pay costs of disciplinary proceeding. Sanders v. Mississippi State Bar Ass'n, 466 So. 2d 891 (Miss. 1985), cert. denied, 474 U.S. 844, 106 S. Ct. 133, 88 L. Ed. 2d 109 (1985).

Mere change of venue does not terminate the duty of a prosecutor; thus in a prosecution for murder, the trial court properly overruled defendants' objection to the participation of a district attorney from the Ninth Judicial District, where the indictment was returned against defendants in the Ninth District but where venue was changed to the Fourteenth District on defendants' motion. Daumer v. State, 381 So. 2d 1014 (Miss. 1980).

A circuit judge acting unilaterally in ex parte fashion without notice to the district attorney and without request of the grand jury lacked authority to bar the district attorney or his associates from a grand jury hearing which investigated a report that the district attorney had failed to investigate and prosecute certain crimes. Necaise v. Logan, 341 So. 2d 91 (Miss. 1976).

Where, during the course of a homicide trial, the district attorney became ill and unable to continue with the prosecution of the case, appointment of a county prosecuting attorney, who had assisted in the trial from the beginning, to continue the trial, was not error, such appointment being not only authorized by law but the logical and appropriate thing to be done under the circumstances. Wilson v. State, 234 So. 2d 303 (Miss. 1970).

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trial in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869 (S.D. Miss. 1969), appeal dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80 (1970).

There is nothing in this section [Code 1942, § 3915] or the chapter creating the office of county prosecuting attorney which invests him with judicial authority or which confers upon him judicial power. Hitt v. State, 182 Miss. 184, 181 So. 331 (1938).

County prosecuting attorney is not a judicial officer within rule that confession to judicial officer is incompetent, unless warning be given that the confession will be used against defendant. Hitt v. State, 182 Miss. 184, 181 So. 331 (1938).

ATTORNEY GENERAL OPINIONS

It is the duty of a county prosecuting attorney to represent the state in misdemeanor cases appealed from Justice Court to the Circuit Court. Ready, Sept. 28, 2001, A.G. Op. #01-0620.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys §§ 18 et seq.

§ 19-23-13. County prosecuting attorney not to defend criminal cases in county.

The county prosecuting attorney shall not represent or defend any person in any criminal prosecution in the name of the state, county or municipality of the county, nor shall he give any advice against the state, his county or in a criminal case against a municipality of his county, and shall not represent any person in any case against the state, his county, or in a criminal case arising in a municipal court of his county. Nothing herein shall prohibit any county prosecuting attorney from defending any person in any criminal prosecution in any county not within the circuit court district of such county prosecuting attorney.

SOURCES: Codes, Hemingway's 1917, § 698; 1930, § 4227; 1942, § 3917; Laws, 1916, ch. 238; Laws, 1950, ch. 276; Laws, 1975, ch. 476, eff from and after passage (approved April 7, 1975).

Cross References — Limitation on criminal practice by county attorney's partner, see § 73-3-49.

JUDICIAL DECISIONS

1. In general.

County attorney may not represent in any way, shape, form, or fashion any person or firm which has been, is or may potentially be subject to investigation for wrongdoing; only advice county attorney may ethically give such person is to get another lawyer. County attorney who accepts employment in civil matter which attorney knows involves issues and parties that will likely later become subject of criminal proceeding will be publicly reprimanded and be required to pay costs of disciplinary proceeding. Sanders v. Mississippi State Bar Ass'n, 466 So. 2d 891 (Miss. 1985), cert. denied, 474 U.S. 844, 106 S. Ct. 133, 88 L. Ed. 2d 109 (1985).

Trial court erroneously denied defendant counsel of his choice, where impediment against chosen counsel's participation in trial was removed by this section which became effective on date of trial, notwithstanding fact that neither judge nor counsel for state or defendant knew that this section had been enacted into law. Myers v. State, 353 So. 2d 1364 (Miss. 1978).

Code 1972, §§ 19-23-13 and 73-3-49, when read together, effectively disqualify a county attorney from representing a defendant in a criminal case in any county of the state, but the partner of a county attorney may represent a defendant in a criminal proceeding outside the county where the county attorney serves. Frackman v. Deposit Guar. Nat'l Bank, 296 So. 2d 695 (Miss. 1974).

§ 19-23-15. County prosecuting attorney may be attorney for supervisors.

The county prosecuting attorney may be employed by the supervisors as the attorney for the board of supervisors, and may be paid the additional salary otherwise provided by law for the board's attorney, in addition to the salary of the county attorney, fixed for services as county prosecuting attorney.

SOURCES: Codes, Hemingway's 1917, § 700; 1930, § 4228; 1942, § 3918; Laws, 1916, ch. 238; Laws, 1928, ch. 71; Laws, 1944, ch. 188.

Cross References — Employment of attorney or law firm by board of supervisors, see § 19-3-47.

Employment of special prosecutor by board of supervisors, see § 19-3-49.

§ 19-23-17. Justice court judges to arrange dates of courts with county prosecuting attorney.

The justice court judges of the county shall confer with the county prosecuting attorney as to the date of holding their respective courts, and by mutual arrangements, shall hold their courts as far apart as possible, so as to enable the county prosecuting attorney to attend their courts when necessary.

SOURCES: Codes, Hemingway's 1917, § 701; 1930, § 4229; 1942, § 3919; Laws, 1916, ch. 238; Laws, 1981, ch. 471, § 43; Laws, 1982, ch. 423, § 28, made eff from and after January 1, 1984.

Editor's Note — Laws, 1981, ch. 471, § 60, as amended by Laws, 1982, chapter 423, § 28, eff from and after March 31, 1982, provides as follows:

"SECTION 60. Section 8 of this act shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Sections 4, 48 and 59 of this act shall take effect and be in force from and after passage. Sections 17 and 22 of this act shall take effect and be in force from and after March 31, 1982. Sections 15, 16 and 58 of this act shall take effect and be in force from and after July 1, 1983. Sections 20, 23, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 46, 47, 49, 50, 51, 52, 54, 55, 56 and 57 of this act shall take effect from and after January 1, 1984, or with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act. Sections 9, 10, 18, 19 and 43 of this act shall take effect and be in force from and after January 1, 1984."

Cross References — Terms of justice of the peace courts, see § 9-11-15.

Criminal jurisdiction of justices of the peace, see § 99-33-1.

§ 19-23-19. Secretarial assistance.

The board of supervisors in each county in the State of Mississippi is hereby authorized, in its discretion, to pay a reasonable sum not exceeding One Thousand Dollars ($1,000.00) per month to the county prosecuting attorney for secretarial services actually rendered to said county prosecuting attorney in the discharge of the official duties of his office.

SOURCES: Codes, 1942, § 3916.5; Laws, 1960, ch. 195, §§ 1-9; Laws, 1964, chs. 362, 363; Laws, 1966, ch. 298, § 1, 1968, ch. 359, § 1; Laws, 1997, ch. 570, § 10, eff October 1, 1997.

Editor's Note — The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1997, ch. 570, § 10.

§ 19-23-21. Appointment of assistant county attorney in certain counties.

The county attorney of any county bordering on the Gulf of Mexico and having two (2) judicial districts may appoint an assistant county attorney from the judicial district in which the county attorney does not reside, to serve for a term commensurate with the county attorney; the assistant county attorney shall receive the same salary, mileage expense account and secretarial assistance as provided by law for the county attorney and shall have the same duties and powers as the county attorney, subject to the direction of the county attorney.

SOURCES: Laws, 1973, ch. 322, § 1, eff from and after October 1, 1973.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Prosecuting Attorneys § 9.

CHAPTER 25

Sheriffs

Sec.
19-25-1. Commission; term of office; oath and bond.
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§ 19-25-1. Commission; term of office; oath and bond.

There shall be chosen one (1) sheriff for each county, who shall be commissioned by the Governor. The sheriff shall continue in office for the term of four (4) years and until his successor shall be qualified, unless sooner removed. Before he enters upon the duties of his office he shall take the oath prescribed by the Constitution, and give bond as prescribed by Section 19-25-5.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3(1); 1857, ch. 6, art 112; 1871, § 219; 1880, § 323; 1892, § 4108; 1906, § 4660; Hemingway's 1917, § 3077; 1930, § 3306; 1942, § 4231; Laws, 1986, ch. 458, § 19, eff from and after October 1, 1986.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 19-25-1 would stand repealed from and after October 1, 1989. Subsequently, Laws, 1986, chapter 458, § 48, was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

Cross References — Term of office, see Miss. Const. Art. 5, § 135.

Manner of selection, see Miss. Const. Art. 5, § 138.

Form of oath, see Miss. Const. Art. 14, § 268.

Appointment of temporary sheriff by court, see § 9-1-27.

Qualifications and training of sheriff, see § 19-25-3.

Amount of bond, see § 19-25-5.

Liability for acts of deputy, see judicial decisions to § 19-25-19.

Provision that sheriffs shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Who may administer oath, see § 25-1-9.

Filing oath of office, see § 25-1-11.

Approval of bond, see § 25-1-19.

Surety requirements on bond, see § 25-1-31.

Salaries of sheriff, see § 25-3-25.

Duties imposed on the sheriff by the Mississippi Code of Military Justice and penalties for failure of performance, see § 33-13-623.

Authority of county law enforcement agencies to acquire property seized under narcotics laws, see § 41-29-181.

Additional surety bond for sheriff permitting rock festival, see § 45-21-9.

Duty of sheriff's office to investigate accidents required to be reported to department of public safety, see § 63-3-411.

Practice of law by sheriffs, see § 73-3-43.

Appointment of sheriff as administrator of estate, see § 91-7-83.

Penalty for gambling by sheriff, see § 97-33-3.

JUDICIAL DECISIONS

1. Removal.
2. Vacancy in office.
3. Bond.
4. Liabilities.

1. Removal.

Since a justice of the peace has no jurisdiction to remove a sheriff from office as directed by Code 1906, § 3477 providing that on his conviction for misconduct in office the court shall remove him, the circuit court, on appeal from such conviction, cannot impose such a sentence. Moore v. State, 91 Miss. 250, 44 So. 817, 124 Am. St. R. 652 (1907).

2. Vacancy in office.

Under Const par 103, the Governor may fill vacancy occasioned by death of sheriff, notwithstanding Code 1906, § 3487, providing deputy may discharge duties of office. Baker v. Nichols, 111 Miss. 673, 72 So. 1 (1916).

3. Bond.

A citizen of another state has a right to sue upon the bond which, by statute, sheriffs are required to give to the governor for the faithful performance of their duties. McNutt ex rel. Leggett v. Bland, 43 U.S. 9, 2 How. 9, 11 L. Ed. 159 (1844).

4. Liabilities.

Particularly in light of the requirement at § 19-25-13 that the sheriff's budget include insurance protection for sheriffs and deputies, it was not intended by the legislature that the fidelity bond required of sheriffs by § 19-25-1 serve as an automobile liability policy; thus, the surety on such a bond could not be held liable for injuries caused by the allegedly negligent driving of a deputy during the performance of his job. Poole v. Brunt, 338 So. 2d 991 (Miss. 1976).

Liability for wrongful levy. Breithaupt v. Dean, 144 Miss. 292, 109 So. 792 (1926).

Liability for failure to return an indemnity bond after selling property claimed to be exempt. New Albany Whsle. Grocery Co. v. Wells, 114 Miss. 144, 74 So. 817 (1917).

A sheriff is not liable on his official bond for injuries inflicted on a prisoner by an employee of a county convict contractor, although the sheriff delivered the prisoner to the contractor before the latter executed bond. State ex rel. Bragg v. Basham, 77 Miss. 688, 27 So. 996 (1900).

A sheriff is not liable on his bond for permitting a successful claimant to take property that had been adjudged to him, during the pendency of an appeal with supersedeas, the supersedeas bond in which was not executed by plaintiff in attachment until nearly four months after date of the judgment appealed from, when it appears that the sheriff had not been served with the writ of supersedeas nor received other official notice of it. Memphis Grocery Co. v. Anderson, 76 Miss. 322, 24 So. 387 (1898).

Where a stock of goods is levied on under attachment, and being inconvenient to move is left there for a few days, and is destroyed by fire, the sheriff is not liable to the plaintiff for the loss, it not appearing that there was reason to believe that the storehouse was an unsafe place. In such case reasonable care, which is the measure of the officer's liability, does not require immediate removal. State ex rel. Barnett v. Dalton, 69 Miss. 611, 10 So. 578 (1892).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 6, 18, 27, 28.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Forms 21 et seq. (rights, duties, and liabilities of sheriffs, police, constables, and their sureties).

CJS. 80 C.J.S., Sheriffs and Constables §§ 7, 8.

§ 19-25-3. Eligibility to hold office of sheriff; training in law enforcement required.

A person shall not be eligible to the office of sheriff who shall, at the time of the election, be a defaulter to the state, or any county or municipality thereof, or to the United States. Any person who is not a qualified elector, or who denies the existence of a Supreme Being, shall not be eligible to said office. A sheriff shall be eligible to immediately succeed himself in office.

Prior to taking the oath of office and entering into the performance of the duties and obligations of sheriff, or as soon after his election as possible, each sheriff-elect, excluding those who have previously served as sheriff, or have had at least five (5) years' experience as a full-time enforcement officer, or have previously successfully completed a course of training at the Mississippi Law Enforcement Officers' Academy or the Jackson Police Academy, shall, at the expense of the county, attend and complete an appropriate curriculum in the field of law enforcement at the Mississippi Law Enforcement Officers' Academy. Any sheriff exempted from attendance because of previous service as sheriff or having five (5) years' full-time law enforcement experience must have served as sheriff or obtained such experience within a period of ten (10) years prior to the date of his taking the oath of office. Any sheriff exempted from attendance because of successful completion of a course of training at either of the aforementioned academies must have completed such course within five (5) years prior to the date of his taking the oath of office. No sheriff, excluding those specified as being exempt from the initial course in this section, shall until he has attended said Academy be entitled to payment of salary after the first one (1) year in office if he fails to attend said academy as herein provided within one (1) year after his taking office. All sheriffs shall, on a periodic basis, attend additional advanced courses in law enforcement in order that they will be properly informed and trained in the modern, technical advances of law enforcement.

Prior to July 1, 1973, or as soon thereafter as permitted by vacancies at the Mississippi Law Enforcement Officers' Academy, either the sheriff or one (1) deputy sheriff in each county having two (2) or more full-time deputies shall, at the expense of the county, attend and complete an appropriate curriculum in the field of narcotics and dangerous drugs at the Mississippi Law Enforcement Officers' Academy. In the event that a new sheriff is elected who has not previously received such training or at least one (1) of his deputies has not previously received such training, or if for any other reason neither the sheriff nor any of the deputy sheriffs in a county shall have received such training, then the sheriff shall promptly notify the director of the Mississippi Law Enforcement Officers' Academy and either the sheriff or a deputy sheriff, as soon thereafter as permitted by vacancies at the academy, shall, at the expense of the county, attend and complete an appropriate curriculum in the field of narcotics and dangerous drugs.

SOURCES: Codes, 1857, ch. 6, art 112; 1880, § 323; 1892, § 4109; 1906, § 4661; Hemingway's 1917, § 3078; 1930, § 3307; 1942, § 4232; Laws, 1968, ch. 369,

§ 1; Laws, 1972, ch. 357, § 1, eff from and after passage (approved April 20, 1972).

Cross References — Provision that no religious test as a qualification for office shall be required, see Miss. Const. Art. 3, § 18.

When sheriff may succeed himself in office, see Miss. Const. Art. 5, § 135.

Provision that no person who denies the existence of a Supreme Being may hold office, see Miss. Const. Art. 14, § 265.

Law Enforcement Officer's Training Academy, see §§ 45-5-1 et seq.

ATTORNEY GENERAL OPINIONS

Under Section 19-25-3, a sheriff may be exempted from the stated training requirement if he has previously served as a sheriff within the last ten years or has had at least five years full-time law enforcement experience within a period of ten years prior to the date of him taking office. Griffin, November 1, 1996, A.G. Op. #96-0742.

A person who, while in a position of public trust or public duty, embezzled funds that were the property of the United States, is a defaulter within the meaning of this section; therefore, if the political party executive committee finds, consistent with fact, and encompasses such finding in an order spread upon its minutes, that the individual who seeks to be a candidate is one and the same person as the individual who pled guilty to misdemeanor embezzlement from the United States, such executive committee is required to withdraw its certification of such individual as a candidate and to remove the name of such individual from the ballot or not place the individual's name upon the ballot. Evans, July 9, 1999, A.G. Op. #99-0346.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 3, 4.

CJS. 80 C.J.S., Sheriffs and Constables § 3.

§ 19-25-5. Penalties of bond.

The sheriffs of the several counties shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officials, in a penalty equal to One Hundred Thousand Dollars ($100,000.00), the premium for which shall be paid by the county.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (2); 1857, ch. 6, art 113; 1871, § 219; 1880, § 324; 1892, § 4110; 1906, § 4662; Hemingway's 1917, § 3097; 1930, § 3308; 1942, § 4233; Laws, 1968, ch. 369, § 2; Laws, 1986, ch. 458, § 20, eff from and after October 1, 1986.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 19-25-5 would stand repealed from and after October 1, 1989. Subsequently, Laws, 1986, chapter 458, § 48, was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

Cross References — Approval of bond, see § 25-1-19.

Surety requirements on bond, see § 25-1-31.

Additional surety bond required of sheriff permitting rock festival, see § 45-21-9.

RESEARCH REFERENCES

ALR. Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Vicarious liability of superior under 42 USCA § 1983 for subordinate's acts in deprivation of civil rights. 51 A.L.R. Fed. 285.

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 6, 18.

§ 19-25-7. Remedy on joint and several; officer's liability first fixed.

The remedy upon sheriff's bond shall be joint and several against all or any one or more of the obligors. In all suits thereon against the surety or sureties, the liability of the sheriff shall be first fixed, except when the sheriff is a party to the suit, has died or removed or is not found.

SOURCES: Codes, 1857, ch. 6, art 114; 1871, § 220; 1880, § 325; 1892, § 4111; 1906, § 4663; Hemingway's 1917, § 3080; 1930, § 3309; 1942, § 4234.

Cross References — Remedy of sheriff against defaulting deputy, see §§ 19-25-25, 19-25-27.

JUDICIAL DECISIONS

1. In general.

A suit may be maintained against a surety bond of a sheriff in an action separate from a suit in tort against the sheriff. United States Fid. & Guar. Co. v. State ex rel. Stringfellow, 254 Miss. 812, 182 So. 2d 919 (1966).

A written agreement executed by sheriff in connection with, and in consideration of, plaintiff's execution as surety of the defendant's bond as sheriff, whereby the sheriff indemnified plaintiff against liability and allowed the plaintiff to compromise claims, was not nullified by this section [Code 1942, § 4234]. American Sur. Co. v. Inmon, 187 F.2d 784 (5th Cir. 1951).

Action on official bond of Alabama sheriff for damages caused by wrongful seizure of truck load of intoxicating liquors as contraband in Alabama is suit on contract notwithstanding that breach of bond consisted of a tort. Barnett v. National Sur. Corp., 195 Miss. 528, 15 So. 2d 775 (1943).

In considering question whether action against surety on official bond of Alabama sheriff for damages caused by illegal seizure of intoxicating liquors as contraband in Alabama was local or transitory, the differences in the governing statutes of Alabama and Mississippi, with reference to who may sue and the procedure, should be taken into consideration, and the fact of the inconvenience that would result from a trial in Mississippi should also be considered. Barnett v. National Sur. Corp., 195 Miss. 528, 15 So. 2d 775 (1943).

Action against surety on official bond of Alabama sheriff for damages caused by illegal seizure of intoxicating liquors in Alabama was local and not transitory, and could not be maintained in Mississippi where surety was doing business. Barnett v. National Sur. Corp., 195 Miss. 528, 15 So. 2d 775 (1943).

In an action against a sheriff and his bondsmen based on the sheriff's alleged tort, it is not necessary that the sheriff's liability be determined and fixed by decree or judgment before an attachment will lie against the surety. Holyfield v. State, 194 Miss. 91, 10 So. 2d 841 (1942).

Sheriff's liability within statute relating to suit against surety becomes "fixed" only by judgment, in action to which he was party. State ex rel. Weems v. United

States Fid. & Guar. Co., 157 Miss. 740, 128 So. 503 (1930).

Favored classification made by statute relating to liability of surety on sheriff's bond held to have sufficient basis. State ex rel. Weems v. United States Fid. & Guar. Co., 157 Miss. 740, 128 So. 503 (1930).

Venue of action, see State ex rel. Thompson v. Cloud, 146 Miss. 642, 112 So. 19 (1927), appeal after remand, 150 Miss. 697, 116 So. 814 (1928).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 52 et seq.

§ 19-25-9. Performance of sheriff's duties when latter is incapable, unfit, or the like.

If the sheriff be a party to or interested in any suit, or for other cause be incapable or unfit to execute his office in any particular case, or if the sheriff shall have outstanding against him a warrant for his arrest, duly executed by any justice court judge, mayor or municipal judge in the county in which he is sheriff, and where there is no vacancy in the office of sheriff, the circuit judge or chancellor of the district in which said county is located, upon being informed of all the conditions and circumstances with reference thereto, may appoint some qualified elector of the county to execute, do and perform the duties of the sheriff.

SOURCES: Codes, Hutchinson's 1848, ch. 29, art 3 (15); 1857, ch. 6, art 151; 1871, § 257; 1880, § 363; 1892, § 828; 1906, § 893; Hemingway's 1917, § 4060; 1930, § 651; 1942, § 3906; Laws, 1938, ch. 296; Laws, 1986, ch. 459, § 28, eff from and after July 1, 1986.

JUDICIAL DECISIONS

1. In general.

Coroner is not inherently and independently clothed with powers of peace officers generally or of a sheriff specifically. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

Coroner per se is not a peace officer, but only performs the functions of a peace officer under certain conditions, and then only those of a displaced sheriff for a temporary period under the conditions set out in this section [Code 1942, § 3906]. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

In determining when a coroner may lawfully execute a search warrant for the search and seizure of intoxicating liquor, this section [Code 1942, § 3906], prescribing occasions on which a coroner may perform the duties of a sheriff, must be read in connection with statute (Code 1942, § 2614) pertaining to issuance of search warrants for search and seizure of intoxicating liquor. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

A search warrant for the search and seizure of intoxicating liquor may properly be delivered to the coroner where the warrant is addressed to a sheriff who falls within any of the disqualifications and exceptions listed in this section [Code 1942, § 3906], but in dealing with the writ the coroner performs the functions of the sheriff and not those of the coroner. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

Coroner, in serving as directed warrant for the search and seizure of intoxicating liquor while acting as coroner and in no other capacity and for no other reason except that he is coroner, usurps the duties and prerogatives of the sheriff. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

Warrant issued by justice of the peace, addressed and delivered to the coroner as such, directing him to search for and seize intoxicating liquor, although the sheriff suffered no disqualification within the purview of this section [Code 1942, § 3906], and which was served, as directed, by the coroner while acting as such officer, was illegal and evidence obtained under authority of such warrant was inadmissible, notwithstanding that the warrant was also addressed to any lawful officer of the county. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

Evidence obtained by coroner under illegal warrant for search and seizure of intoxicating liquor was inadmissible in prosecution for permitting games of chance to be played for money on defendant's premises. Millwood v. State, 198 Miss. 485, 23 So. 2d 496 (1945).

This section [Code 1942, § 3906] is wise and trial judges should exercise a liberal discretion in enforcing it. Lipscomb v. State, 76 Miss. 223, 25 So. 158 (1899).

This section Code 1942, § 3906, and Code 1906, § 3487, are to be construed together, and so construing them the former does not require the performance of official duties by a deputy sheriff whose principal is living and disqualified. Lipscomb v. State, 76 Miss. 223, 25 So. 158 (1899).

ATTORNEY GENERAL OPINIONS

When a sheriff is so ill as to be unable to perform his official duties, the circuit court may appoint a suitable person to discharge the sheriff's duties until such time as the incumbent is able to return, and the county board may make a recommendation to the court in regard to such appointment. Farese, Apr. 6, 2001, A.G. Op. #01-0080.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 23.

§ 19-25-11. Arrest and confinement of sheriff.

In the event there is outstanding a warrant for the arrest of the sheriff of the county issued by any justice of the peace, mayor, or any police justice in said county whereby the said sheriff has been charged by affidavit duly made before said justice of the peace, mayor, or police justice in said county for any misdemeanor or felony, any constable of the county, or any marshal or police officer of any municipality located in said county, may execute said warrant and arrest the said sheriff. In his failure to make bond in the amount as fixed by the justice of the peace, mayor or police justice where said affidavit was made, the officer making the arrest may confine said sheriff in a county jail adjoining the county of his residence, or in any other county jail in the state, and on the date of trial shall deliver him up to the court for trial. Said officer making the arrest shall be the jailer of said county during the confinement of the said sheriff in jail and/or while his cause on said criminal charge is pending for trial, provided the sheriff was jailer and living in the jail at the time of his arrest.

SOURCES: Codes, Hutchinson's 1848, ch. 29, art 3 (15); 1857, ch. 6 art 151; 1871, § 257; 1880, § 363; 1892, § 828; 1906, § 893; Hemingway's 1917, § 4060; 1930, § 651; 1942, § 3906; Laws, 1938, ch. 296.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 3906] is wise and trial judges should exercise a liberal discretion in enforcing it. Lipscomb v. State, 76 Miss. 223, 25 So. 158 (1899).

§ 19-25-13. Budgeting and financing of sheriffs' departments.

The sheriff shall, at the July meeting of the board of supervisors, submit a budget of estimated expenses of his office for the ensuing fiscal year beginning October 1 in such form as shall be prescribed by the Director of the State Department of Audit. The board shall examine this proposed budget and determine the amount to be expended by the sheriff in the performance of his duties for the fiscal year and may increase or reduce said amount as it deems necessary and proper.

The budget shall include amounts for compensating the deputies and other employees of the sheriff's office, for insurance providing protection for the sheriff and his deputies in case of disability, death and other similar coverage, for travel and transportation expenses of the sheriff and deputies, for feeding prisoners and inmates of the county jail, and for such other expenses as may be incurred in the performance of the duties of the office of sheriff. In addition, the budget shall include amounts for the payment of premiums on bonds and insurance for the sheriff and his deputies which, in the opinion of the board of supervisors, are deemed necessary to protect the interests of the county or the sheriff and his deputies. Such amounts may include official bonds and any bonds required of his deputies by the sheriff; liability insurance; insurance against false arrest charges; insurance against false imprisonment charges; theft, fire and other hazards insurance; and hospitalization insurance as provided for in Sections 25-15-101 and 25-15-103. The board may authorize the reimbursement of the sheriff and deputies for the use of privately owned automobiles or other motor vehicles in the performance of official duties at the rate provided by law for state officers and employees, or may authorize the purchase by the sheriff of such motor vehicles and such equipment as may be needed for operation of the sheriff's office, such vehicles and equipment to be owned by the county. In counties which have elected to purchase the motor vehicles and such equipment for the operation of the sheriff's office, if a sheriff or deputy shall be required in the performance of his official duties, in the event of an emergency, to use his privately owned automobile or other motor vehicle, the board of supervisors may, in its discretion, authorize the reimbursement for such use at the rate per mile provided by law for state officers and employees. This shall not be construed as giving an officer a choice of whether to use his own or the county's vehicle, but shall be construed so as not to penalize an officer who must use his own vehicle because the county's vehicle was not available.

The board of supervisors, in its discretion, may include in its annual budget for the sheriff's office an amount not to exceed One Thousand Dollars ($1,000.00), which may be expended by the sheriff to provide food, water and beverages for the sheriff, the sheriff's deputies, state, national and local law enforcement officers, emergency personnel, county employees and members of the general public who the sheriff requests to assist him and his office while in the performance of search and rescue missions, disasters or other emergency operations.

The board of supervisors may acquire one or more credit cards which may be used by the sheriff and his deputies to pay expenses incurred by them when traveling in or out of state in the performance of their official duties. The chancery clerk or county purchase clerk shall maintain complete records of all credit card numbers and all receipts and other documents relating to the use of such credit cards. The sheriff shall furnish receipts for the use of such credit cards each month to the chancery clerk or purchase clerk who shall submit a written report monthly to the board of supervisors, which report shall include an itemized list of all expenditures and use of the credit cards for the month, and such expenditures may be allowed for payment by the county in the same manner as other items on the claims docket. The issuance of a credit card to a sheriff or his deputy under the provisions of this section shall not be construed to authorize such sheriff or deputy sheriff to use such credit card to make any expenditure which is not otherwise authorized by law.

The board of supervisors is hereby authorized and empowered, in its discretion, to appropriate and pay a sum not to exceed Four Hundred Dollars ($400.00) annually as a clothing allowance to each plainclothes investigator employed by the sheriff's office of such county. The board of supervisors of any county bordering on the Gulf of Mexico and having a population of more than thirty-one thousand seven hundred (31,700) but less than thirty-one thousand eight hundred (31,800) according to the 1990 Federal Census may appropriate and pay a sum not to exceed Four Hundred Dollars ($400.00) annually as a clothing allowance to the administrator of the county jail.

The board of supervisors shall, at its first meeting of each quarter beginning on October 1, January 1, April 1 and July 1, appropriate a lump sum for the sheriff for the expenses of his office during the current quarter. The quarterly appropriation shall be one-fourth (¼) of the amount approved in the annual budget unless the sheriff requests a different amount. Except in case of emergency, as provided in the county budget law, the appropriation for the quarter beginning in October of the last year of the sheriff's term shall not exceed one-fourth (¼) of the annual budget.

The sheriff shall file a report of all expenses of his office incurred during the preceding month with the board of supervisors for approval at its regular monthly meeting in a form to be prescribed by the Director of the State Department of Audit, and upon filing thereof, and approval by the board, the clerk of the board shall issue warrants in payment thereof but not to exceed the budget appropriation for that quarter. Any appropriated funds which are unexpended at the end of the fiscal year shall remain in the county general fund.

The budget for the sheriff's office may be revised at any regular meeting by the board of supervisors. Upon recommendation of the sheriff, the board may at any regular meeting make supplemental appropriations to the sheriff's office.

Any fees previously required to be paid by a sheriff shall be paid by the board of supervisors by including the estimates therefor in the sheriff's budget. All fees and charges for services heretofore collected by sheriffs shall be collected by said sheriff and paid monthly into the general fund of the concerned county. However, any fees heretofore collected by such sheriffs from the county shall not be paid.

SOURCES: Codes, 1942, § 4232.5; Laws, 1968, ch. 369, § 8; Laws, 1972, ch. 385, § 1; Laws, 1988, ch. 363; Laws, 1989, ch. 542, § 1; Laws, 1990, ch. 421, § 1; Laws, 1991, ch. 518, § 1; Laws, 2007, ch. 508, § 1, eff from and after July 1, 2007.

Cross References — Department of audit generally, see §§ 7-7-1 et seq.

County budget generally, see §§ 19-11-1 et seq.

Supplemental tax levy in certain counties to pay the operating budget of sheriff, tax collector and tax assessor, see § 27-1-32.

JUDICIAL DECISIONS

1. In general.
2. Political subdivision.

1. In general.

This section mandates sheriffs to include liability insurance expenses in their budgets, but does not require a board of supervisors to obtain that liability insurance for the sheriff; pursuant to § 19-7-8 [repealed], a board of supervisors has discretion to obtain liability insurance. Thus, in a personal injury action arising out of a collision with an auto driven by sheriff's deputy, plaintiff could not recover from the individual members of a board of supervisors on the basis that they had a duty to obtain liability insurance covering the vehicles in the sheriff's office, since that duty was discretionary, not mandatory, and since approval of the sheriff's budget did not impose a ministerial duty upon the board to obtain such insurance. State ex rel. Poole v. Maryland Cas. Co., 380 So. 2d 238 (Miss. 1980).

Particularly in light of the requirement at § 19-25-13 that the sheriff's budget include insurance protection for sheriffs and deputies, it was not intended by the legislature that the fidelity bond required of sheriffs by § 19-25-1 serve as an automobile liability policy; thus, the surety on such a bond could not be held liable for injuries caused by the allegedly negligent driving of a deputy during the performance of his job. Poole v. Brunt, 338 So. 2d 991 (Miss. 1976).

2. Political subdivision.

In a case of first impression, the Supreme Court of Mississippi held that a county sheriff's department was not a political subdivision as defined in Miss. Code Ann. § 11-46-1(i), of the Mississippi Tort Claims Act (MTCA), and thus an individual's suit naming the sheriff's department was not properly filed; the county should have been named as the governmental defendant. A review of the structural relationship between counties and sheriff's departments in Miss. Code Ann. § 19-25-13 and Miss. Code Ann.

§ 19-25-19 supported that holding. Brown v. Thompson, 927 So. 2d 733 (Miss. 2006).

ATTORNEY GENERAL OPINIONS

Under Section 19-25-13, a chaplain/counselor may be classified as an "other employee" of the Sheriff. Therefore, the Board of Supervisors may approve a request of funding by the Sheriff that would provide for the employment of a chaplain/counselor. Vickery, July 26, 1995, A.G. Op. #95-0389.

Regular deputies appointed under Section 19-25-19 do not need to post bond unless required to do so by the sheriff under Section 19-25-13. With the exception of the bond requirements of Section 19-25-13, only those deputies appointed under Section 45-5-9 and designated as "extra deputies" are statutorily mandated to be bonded. McWilliams, June 21, 1996, A.G. Op. #96-0376.

Based on Section 19-25-13, a sheriff should submit a proposed budget itemized as to funds requested for various categories of expenditure to the board of supervisors. The board of supervisors may then reduce or increase the amount proposed for each category of the budget as it deems necessary and proper. Also, the Board may amend the sheriff's budget from time to time to adjust to new or different expense needs. Simmons, November 8, 1996, A.G. Op. #96-0764.

The statute allows a board of supervisors to provide a credit card to the sheriff and his deputies for use in the performance of their official duties; however, the statute does not mandate that the board of supervisors provide such a credit card. Breazeale, Feb. 18, 2000, A.G. Op. #2000-0049.

A board of supervisors could adopt a resolution for the county sheriff's department to charge a fee for performing criminal background checks, fingerprinting, etc., and the funds generated thereby should be paid into the general fund on a monthly basis. Trapp, Jr., June 7, 2002, A.G. Op. #02-0286.

Board of supervisors' authority does not extend to establishing a quarterly budget allocation for the office of the chancery clerk. Crook, Nov. 1, 2002, A.G. Op. #02-0638.

The sheriff has the same hiring authority in the quarter before an upcoming election as in any other quarter in a term of office. Fortier, Aug. 1, 2003, A.G. Op. 03-0300.

The sheriff's authority to hire personnel is not subject to board approval except to the extent of budgetary constraints. Fortier, Aug. 1, 2003, A.G. Op. 03-0300.

RESEARCH REFERENCES

ALR. Liability of police or peace officers for false arrest, imprisonment, or malicious prosecution as affected by claim of suppression, failure to disclose, or failure to investigate exculpatory evidence. 81 A.L.R.4th 1031.

§ 19-25-15. Identification of sheriffs' motor vehicles; use of unmarked vehicles.

Motor vehicles purchased or leased by the county for the sheriff's office shall be clearly marked on both sides with the words "SHERIFF'S DEPARTMENT." The use of large auto door decals shall constitute compliance with this section. Each such motor vehicle shall be marked on the sides or trunk top with the name of the county in clear letters of no less than four (4) inches in height. However, in instances where such identifying marks will hinder official investigations, the board of supervisors may authorize the sheriff's department to use a specified number of unmarked vehicles. The approval of the board shall be entered on its minutes and shall contain the manufacturer's serial number and the reason why the vehicle or vehicles should be exempt from provisions of this section. In addition, the manufacturer's serial number of all county-owned sheriff's department vehicles not subject to the exemption shall be included in such resolution or order of approval, and a certified copy thereof shall be furnished the State Department of Audit. Any vehicle found to be in violation of this paragraph shall be reported immediately to the sheriff and the board of supervisors, and fifteen (15) days shall be given for compliance; and if not complied with, such vehicles shall be impounded by the State Auditor until properly marked or exempted.

SOURCES: Codes, 1942, § 4232.5; Laws, 1968 ch. 369, § 8; Laws, 1975, ch. 489, § 1; Laws, 1990, ch. 583, § 1; Laws, 1991, ch. 327, § 1; Laws, 1991, ch. 565, § 1; Laws, 1992, ch. 334 § 1; Laws, 1995, ch. 466, § 1; Laws, 1997, ch. 434, § 1, eff from and after July 1, 1997.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Supplemental tax levy in certain counties to pay the operating budget of sheriff, tax collector and tax assessor, see § 27-1-32.

§ 19-25-17. Purchase of patrol boats for sheriffs in certain counties.

The board of supervisors of any county in which is located, in whole or in part, a federal flood control reservoir, of a federal waterway, is authorized and empowered, in its discretion, to expend out of the general fund of the county a sum not to exceed five thousand dollars ($5,000.00) for the purchase of a power-driven boat and related marine equipment for use by the sheriff in rescue, search, and general patrol and enforcement work, and for no other purpose.

The cost of operation and maintenance of said boat and equipment shall be paid by the board of supervisors out of the general fund, but these payments shall not be considered a part of the Five Thousand Dollar ($5,000.00) limitation stipulated above. The boat and equipment shall remain in the custody of the sheriff.

SOURCES: Codes, 1942, § 4256.5; Laws, 1958, ch. 223.

§ 19-25-19. Appointment, oath and compensation of deputy sheriffs.

Every sheriff shall have power to appoint one or more deputies to assist him in carrying out the duties of his office, every such appointment to be in writing, to remove them at pleasure, and to fix their compensation, subject to the budget for the sheriff's office approved by the county board of supervisors. Such deputies shall have authority to do all the acts and duties enjoined upon their principals. Every deputy sheriff, except such as may be appointed to do a particular act only, before he enters on the duties of office, shall take and subscribe an oath faithfully to execute the office of deputy sheriff, according to the best of his skill and judgment. The appointment, with the certificate of the oath, shall be filed and preserved in the office of the clerk of the board of supervisors. All sheriffs shall be liable for the acts of their deputies, and for money collected by them. The circuit court, after a notice and a hearing, shall have power to remove such deputies and also bailiffs, upon a showing that the public interest will be served thereby. Each deputy sheriff shall be at least twenty-one (21) years of age, a qualified elector of the State of Mississippi, and shall not have been convicted of a felony. Prior to appointing any person a deputy sheriff, the sheriff shall determine that the proposed appointee is of good moral character and is capable of fairly and impartially enforcing the law of the State of Mississippi.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (6); 1857, ch. 6, art 115; 1871, § 221; 1880, § 326; 1892, § 4112; 1906, § 4664; Hemingway's 1917, § 3081; 1930, § 3310; 1942, §§ 4232.5, 4235; Laws, 1968, ch. 369, §§ 3, 8; Laws, 1988, ch. 463, eff from and after October 1, 1988.

Cross References — Discharge of sheriff's duties by deputy after death of sheriff, see § 25-1-39.

Salaries of deputies where there are two judicial districts, see § 25-3-27.

Supplemental tax levy in certain counties to pay the operating budget of sheriff, tax collector and tax assessor, see § 27-1-32.

Appointment of extra deputies, see § 45-5-9.

JUDICIAL DECISIONS

1. In general.
2. Sheriff's liability for acts of deputy.
3. Removal of deputies and bailiffs.
4. Joint employer.
5. Political subdivision.

1. In general.

Dismissal of the employee's action after he was terminated was proper because it was determined that the sheriff was the person who in fact terminated the employee; thus, the employee's contention that the commander terminated him in violation of Miss. Code Ann. § 19-25-19 was without merit. Clanton v. DeSoto County Sheriff's Dep't, 963 So. 2d 560 (Miss. Ct. App. 2007).

In a prosecution for simple assault upon a law enforcement officer, the trial court did not err in finding that the victim was a "law enforcement officer" acting within the scope of his duties at the time of the offense, even though he had not attended the law enforcement training academy as required by § 45-6-3(c), since he was a "de jure deputy sheriff" where he was appointed by the sheriff pursuant to § 19-25-19 to act as a jailer, and he was wearing a signed identification card and a uniform at the time of the offense. Amerson v. State, 648 So. 2d 58 (Miss. 1994).

No reversible error was found in trial judge excluding testimony directed toward identity of person who actually served summons; one acting generally as deputy sheriff, under written appointment from sheriff, although not having qualified according to law, is de facto officer and between third parties his actions are valid; and, in absence of proof to contrary, it is presumed that person whose name was appended to return on writ as special deputy was duly authorized as such. Pointer v. Huffman, 509 So. 2d 870 (Miss. 1987).

Award against sheriff under § 19-25-19 may be made against sheriff in individual capacity, as well as in official capacity. Dennis v. Warren, 779 F.2d 245 (5th Cir. 1985).

A suit may be maintained against a surety bond of a sheriff in an action separate from a suit in tort against the sheriff. United States Fid. & Guar. Co. v. State ex rel. Stringfellow, 254 Miss. 812, 182 So. 2d 919 (1966).

Removal of deputy by sheriff under authority of this section [Code 1942, § 4235] renders moot the validity of a court order removing the deputy. Ex parte Castle, 248 Miss. 159, 159 So. 2d 81 (1963).

A deputy sheriff and his surety are not liable to the sheriff for embezzlement of funds by another deputy appointed by the sheriff, even though he might have discovered the embezzlement. Wittmann v. Harrod, 246 Miss. 832, 152 So. 2d 717 (1963).

Deputy authorized to sell land for taxes and to execute a deed therefor. Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241 (1919).

Position of deputy sheriff an office and hence appointee must be qualified elector. State ex rel. Baker v. Nichols, 106 Miss. 419, 63 So. 1025 (1914).

A person is not disqualified to act as deputy sheriff in levying an execution because he is agent for plaintiff in collecting the judgment and is to receive a commission on the collection, and it is error to quash a levy because of such fact. Badley v. Ladd, 70 Miss. 688, 12 So. 832 (1893).

One acting generally as a deputy sheriff, under written appointment from the sheriff, although not having qualified according to law, is a de facto officer and as between third parties his actions are valid. Alabama & V. Ry. Co. v. Bolding, 69 Miss. 255, 13 So. 844, 30 Am. St. R. 541 (1891).

The authorization of a special deputy to do a special act must be by the sheriff in writing; but such appointment need not, as in the case of a regular deputy, be filed with the clerk of the board of supervisors. In the absence of proof to the contrary, it will be presumed that a person whose name is appended to a return on a writ as a special deputy was duly authorized as such; it is unnecessary that his appointment should be on the writ. Nelson v. Nye, 43 Miss. 124 (1870).

2. Sheriff's liability for acts of deputy.

Despite the statutory grant of vicarious liability of the sheriff for the acts of deputies, such vicarious or respondeat superior liability did not apply in actions under 42 U.S.C.S. § 1983. Henley v. Edlemon, 297 F.3d 427 (5th Cir. 2002).

Sheriff may not be held vicariously liable, in civil rights action under 42 USCS § 1983, for excessive force used by sheriff's deputies in shooting incident. Coon v. Ledbetter, 780 F.2d 1158 (5th Cir. 1986).

Sheriff who is not liable under 42 USCA § 1983 for deputy's conduct in making illegal arrest and detention because sheriff is not personally involved in arrest or detention and because there is no causal connection between act by sheriff and violations of federal rights of person arrested and detained may nonetheless be held liable for damages under § 19-25-19. Dennis v. Warren, 779 F.2d 245 (5th Cir. 1985).

When a deputy sheriff negligently uses an automobile furnished him for official use and used by virtue of or under color of his office, or in his official position as deputy sheriff, then the sheriff is liable to a person injured as a proximate result thereof; thus, a cause of action against the sheriff was stated by plaintiff in a personal injury action who alleged that her car was struck head-on by a car driven by a deputy sheriff acting officially in the course of his employment and driving his car negligently. Poole v. Brunt, 338 So. 2d 991 (Miss. 1976).

A sheriff's bond is liable for the acts of a deputy sheriff acting within the scope of his authority, and where the deputy caused a wrongful death the sheriff and his surety are liable. United States Fid. & Guar. Co. v. State ex rel. Stringfellow, 254 Miss. 812, 182 So. 2d 919 (1966).

A deputy sheriff is not acting by virtue, or under color, of his office, so as to render the sheriff liable for his acts, where, having taken a person into custody for the purpose of questioning him, he tells another, who has intervened on behalf of such person, that the latter is not under arrest, the discussion finally leading to the shooting of the inquiring party by the deputy. State, ex rel. Dew v. Lightcap, 181 Miss. 893, 179 So. 880 (1938).

Limitation of one year held inapplicable in action against sheriff and surety for damages by reason of having been shot and wounded by deputy. State ex rel. Smith v. Smith, 156 Miss. 288, 125 So. 825 (1930).

Sheriff's admission he had appointed one injuring plaintiff as deputy held admissible against sheriff and sureties. McCoy v. Key, 155 Miss. 64, 123 So. 873 (1929).

Sheriff and bond liable for acts of de facto deputies acting within general scope of authority. Dean v. Brannon, 139 Miss. 312, 104 So. 173 (1925).

A misdemeanant who was unjustifiably shot by a deputy in attempting to arrest him under a warrant, or in attempting to prevent his escape after arrest, can maintain an action for damages against the sheriff on his official bond. Brown v. Weaver, 76 Miss. 7, 23 So. 388, 71 Am. St. R. 512 (1898).

The action of the plaintiff in a judgment in naming a person to act as deputy and requesting his appointment to execute the writ is not such interference as will relieve the sheriff and his bondsmen from liability to the plaintiff for the negligence of the deputy resulting in the loss of goods levied and left in his charge. State ex rel. Barnett v. Dalton, 69 Miss. 611, 10 So. 578 (1892).

3. Removal of deputies and bailiffs.

The sheriff has the power to remove a deputy at pleasure but the court is not authorized to remove the deputy without giving him notice and opportunity to disprove charges. In re Bishop, 211 Miss. 518, 52 So. 2d 18 (1951).

This section [Code 1942, § 4235] which gives the circuit court the power to remove deputies and also bailiffs, necessarily implies that there must be some cause or ground underlying the removal and that such fact must have a direct bearing upon the kind of service the deputy is supposed to render to the public and the court. In re Bishop, 211 Miss. 518, 52 So. 2d 18 (1951).

4. Joint employer.

County was joint employer of current and former county sheriff's department employees under FLSA; although county lacked power to hire and fire, county had some control in this area by allocating funds to sheriff to operate his department, county actually paid employees and employees' time cards were turned in to chancery clerk for preparation of paychecks. Barfield v. Madison County, 984 F. Supp. 491 (S.D. Miss. 1997).

5. Political subdivision.

In a case of first impression, the Supreme Court of Mississippi held that a county sheriff's department was not a political subdivision as defined in Miss. Code Ann. § 11-46-1(i), of the Mississippi Tort Claims Act (MTCA), and thus an individual's suit naming the sheriff's department was not properly filed; the county should have been named as the governmental defendant. A review of the structural relationship between counties and sheriff's departments in Miss. Code Ann. § 19-25-13 and Miss. Code Ann. § 19-25-19 supported that holding. Brown v. Thompson, 927 So. 2d 733 (Miss. 2006).

Although Miss. Code Ann. § 19-25-19 states that all sheriffs shall be liable for the acts of their deputies, this does not provide sufficient weight to tip the argument in favor of finding that a sheriff's department is a separate political subdivision or governmental entity for purposes of the Mississippi Tort Claims Act (MTCA). Brown v. Thompson, 927 So. 2d 733 (Miss. 2006).

ATTORNEY GENERAL OPINIONS

Sheriff's deputy who has been convicted of felony does not possess qualification to hold office of deputy sheriff under Miss. Code Section 19-25-19 which requires that each deputy sheriff "shall not have been convicted of a felony"; where individual is convicted, but conviction is later reversed on appeal, there is no legal authority or responsibility for county to pay compensatory damages in form of back pay. Griffith, Apr. 14, 1993, A.G. Op. #93-0178.

Under Miss. Code Section 19-25-19, local governing authorities may enter into employment contracts and adopt work schedule policies providing for time-and-half pay for their employees. Pope, Apr. 14, 1993, A.G. Op. #93-0069.

Under state law an individual serving as constable would not be required to resign or take a leave of absence from his employment as a deputy sheriff. However, a deputy sheriff serves at the pleasure of the sheriff and can be removed by the sheriff at pleasure. Malone, January 23, 1995, A.G. Op. #95-0017.

There are no statutory provisions in the Mississippi Code which set an age restriction for either a jailer or a dispatcher, and there is no requirement that a jailer or dispatcher be a deputy sheriff. However, the Board of Emergency Telecommunications Standards and Training has implemented a regulation requiring all dispatchers to be at least eighteen years old. See Section 19-25-19. Tullos, February 7, 1996, A.G. Op. #96-0018.

Under Section 19-25-35 and 19-25-19, a sheriff has ultimate authority over a deputy appointed by him, even if that deputy is assigned as a bailiff. The sheriff has the authority to transfer or terminate a deputy at will. Best, March 29, 1996, A.G. Op. #96-0166.

Under Section 19-25-19, a deputy who is serving as bailiff may be removed from office at will by the sheriff or may be removed from office by a circuit judge after notice and a hearing, if the public interest will be served. There is no statutory provision that gives the court the authority to "veto" or invalidate a sheriff's decision to transfer a deputy serving as bailiff. Best, March 29, 1996, A.G. Op. #96-0166.

Section 45-5-9 only applies to "extra deputies" and not to regularly appointed, full-time deputies as set forth in Section 19-25-19. McWilliams, June 21, 1996, A.G. Op. #96-0376.

Regular deputies appointed under Section 19-25-19 do not need to post bond unless required to do so by the sheriff under Section 19-25-13. With the exception of the bond requirements of Section 19-25-13, only those deputies appointed under Section 45-5-9 and designated as "extra deputies" are statutorily mandated to be bonded. McWilliams, June 21, 1996, A.G. Op. #96-0376.

The statute allows a sheriff to hire a deputy sheriff to perform specific duties, i.e. service of process. Simmons, August 28, 1998, A.G. Op. #98-0505.

It is the sheriff's duty to appoint bailiffs, subject to the power of the board of supervisors should he fail in this regard, and subject to the power of the court to appoint riding bailiffs and to remove bailiffs for cause. Evans, November 25, 1998, A.G. Op. #98-0687.

Notwithstanding the statute, Chapter 802 of Local and Private Laws of the State of Mississippi, 1990, allows the Civil Service Commission established for the Hancock County Sheriff's Office to make rules and regulations with regard to the appointment, discharge, or retention of full-time deputy sheriffs and, as such, the sheriff-elect is bound to follow those rules and regulations. Peterson, Dec. 3, 1999, A.G. Op. #99-0650.

Insofar as Chapter 802 of Local and Private Laws of the State of Mississippi, 1990, is in direct conflict or specifically provides for an alternative outcome, the statute is superseded; however, portions of the statute that are not affected by the local and private legislation remain in force. Peterson, Dec. 3, 1999, A.G. Op. #99-0650.

Any individual who is not certified, meeting the standards as set by the Board on Law Enforcement Officers Standards and Training, may not serve as a law enforcement officer or part-time law enforcement officer. Byrd, Dec. 17, 1999, A.G. Op. #99-0665.

A sheriff has discretion to set the compensation of his deputies, which may include a supplement based on the number of warrants served, subject to the budget for the sheriff's office approved by the county board of supervisors. Carter, Oct. 6, 2000, A.G. Op. #2000-0576.

It is incumbent upon a sheriff to ensure that any person appointed by him to be a deputy sheriff meets the statutory requirements; the Board on Law Enforcement Officers Standards and Training should also be consulted with regard to any requirements that must be met before the deputy may be certified as a law enforcement officer. Page, Mar. 21, 2003, A.G. Op. #03-0087.

A sheriff has exclusive authority and control over his employees and this authority includes hiring, firing, disciplinary rules and regulations as well as other general operations of his office. Tolar, Mar. 28, 2003, A.G. Op. #03-0046.

The only way to ensure that all members of a multi-jurisdictional drug task force have full law enforcement authority in the entire area encompassed by the agreement is for each participating sheriff to deputize any agents of the task force that do not currently possess independent law enforcement authority in that county. Stephens, Feb. 27, 2004, A.G. Op. 04-0074.

A sheriff could appoint the county animal control officer to be a deputy for the purpose of handling any situation regarding a rabid or vicious animal. However, that if such officer is declared a deputy sheriff, she would be an agent of the sheriff and the sheriff would be responsible for her actions. Jewell, Aug. 20, 2004, A.G. Op. 04-0290.

The only officials who have the authority to assign work to deputy sheriffs are the sheriff himself and any officers subordinate to the sheriff to whom the sheriff has specifically delegated the authority to make work assignments to the employees of the sheriff's office. Simmons, Aug. 6, 2005, A.G. Op. 05-0376.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 2, 30 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 1.1 (petition or application — for writ of mandamus — to compel reinstatement of discharged deputy sheriff — Insufficient ground for dismissal).

CJS. 80 C.J.S., Sheriffs and Constables § 21.

§ 19-25-21. Law enforcement deputies.

The minimum number of deputies having law enforcement duties for each sheriff shall be based upon the total population of his county according to the latest federal decennial census in the following categories:

(a) in counties with a total population of more than fifty thousand (50,000), the sheriff shall regularly employ a minimum of five (5) deputies having law enforcement duties;

(b) in counties with a total population of more than thirty-five thousand (35,000), and not more than fifty thousand (50,000), the sheriff shall regularly employ a minimum of four (4) deputies having law enforcement duties;

(c) in counties with a total population of more than twenty-five thousand (25,000), and not more than thirty-five thousand (35,000), the sheriff shall regularly employ a minimum of three (3) deputies having law enforcement duties;

(d) in counties with a total population of more than fifteen thousand (15,000), and not more than twenty-five thousand (25,000), the sheriff shall regularly employ a minimum of two (2) deputies having law enforcement duties;

(e) in all other counties, the sheriff shall regularly employ a minimum of one (1) deputy sheriff having law enforcement duties.

In those counties comprised of two (2) judicial districts having a total population of thirty-five thousand (35,000) or more, there shall be not less than two (2) deputies in the judicial district in which the sheriff does not reside, one (1) of whom shall be the chief deputy in charge of the office, all of whom shall be subject to the direction of the sheriff. In those counties comprised of two (2) judicial districts having a total population of less than thirty-five thousand (35,000), there shall be at least one (1) deputy in the judicial district in which the sheriff does not reside who shall be subject to the direction of the sheriff.

Each deputy sheriff who shall have law enforcement duties shall, at the expense of the county, attend and complete an appropriate curriculum in the field of law enforcement at the Mississippi Law Enforcement Officers' Academy within one (1) year from the date of his appointment, excluding those who have previously served as sheriff, or have had at least five (5) years' experience as a full-time law enforcement officer, or have previously successfully completed a course of training at the Mississippi Law Enforcement Officers' Academy or at the Jackson Police Academy. Any deputy sheriff exempted from attendance at the initial course as herein provided because of previous service as sheriff or having five (5) years' full-time law enforcement experience must have served as sheriff or obtained such experience within a period of ten (10) years prior to the date of his taking the oath of office. Any deputy sheriff exempted from attendance because of successful completion of a course of training at either of the aforementioned academies must have completed such course within five (5) years prior to the date of his taking the oath of office. Each deputy sheriff shall thereafter, on a periodic and continuing basis, attend additional advanced courses in law enforcement at said Academy in order that each deputy sheriff will be properly informed and trained in the modern, technical advances in the field of law enforcement.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (6); 1857, ch. 6, art 115; 1871, § 221; 1880, § 326; 1892, § 4112; 1906, § 4664; Hemingway's 1917, § 3081; 1930, § 3310; 1942, §§ 4234.5, 4235; Laws, 1968, ch. 369, §§ 3, 4; Laws, 1972, ch. 357, § 2, eff from and after passage (approved April 20, 1972).

Cross References — Mississippi Law Enforcement Officers' Academy, see §§ 45-5-1 et seq.

ATTORNEY GENERAL OPINIONS

As long as law enforcement officer in tricounty narcotics task force is deputized in county in which he or she is working, officer may make arrests in that county under same rules for making arrests in officer's home jurisdiction. Jennings, Oct. 7, 1992, A.G. Op. #92-0591.

If an auxiliary deputy is assigned to have law enforcement duties, then he is subject to the training requirements of Section 19-25-21. Norquist, July 12, 1996, A.G. Op. #96-0458.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 2, 30.

§ 19-25-23. Maintenance of regular and auxiliary deputies; assistance to other counties; assistance for drug enforcement purposes.

Each sheriff shall maintain and cause to be paid a sufficient number of regular deputies, properly trained and adequately equipped, to insure the domestic tranquility within his county. In addition thereto, each sheriff may maintain an adequate number of properly trained auxiliary deputy sheriffs to be equipped, trained and paid from the general county fund. The number of said auxiliary deputies shall be approved by the board of supervisors and may be increased or reduced from time to time by said board. All regular and auxiliary deputies may serve in any other county of the state when requested by the sheriff of such county to preserve law and order therein, the expense thereof to be paid by the county in which they serve. The request shall be made to the sheriff of the county in which said deputies are located and said deputies shall remain under the control of said sheriff except to the extent delegated by said sheriff to the sheriff of the requesting county. In addition, any sheriff may loan any regular or auxiliary deputy to any law enforcement agency of the state or of any political subdivision of the state for drug enforcement purposes, the expense of the officer to be paid by the agency to which the officer is assigned.

SOURCES: Laws, 1968, ch. 369, § 5; Laws, 1998, ch. 494, § 2, eff from and after passage (approved March 26, 1998).

ATTORNEY GENERAL OPINIONS

With regard to auxiliary deputies, the board of supervisors only has the power to approve the number of such auxiliary deputies and does not have any control over who may be named auxiliary deputy by the sheriff. Farmer, Feb. 6, 2004, A.G. Op. 04-0005.

The board of supervisors does not have authority to hire or fire sheriff department employees, whether they are full time, part time, or unpaid auxiliary employees. Likewise, the board does not have authority to demand for a sheriff to fire an employee. Simmons, Aug. 8, 2005, A.G. Op. 05-0370.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 2, 30.

§ 19-25-25. Remedy of sheriff against defaulting deputy.

The sheriff shall have the same remedy and judgment against his deputies and their sureties, for failing to pay money received on executions or other process to the sheriff, or to the party to whom the same is payable, or for any other act or default in office, as the creditor at whose suit such writ issued may have against the sheriff.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (8); 1857, ch. 6, art 116; 1871, § 222; 1880, § 327; 1892, § 4113; 1906, § 4665; Hemingway's 1917, § 3082; 1930, § 3312, 1942, § 4237.

Cross References — Police vehicles to be marked with blue lights, except as provided in this section, see § 63-7-19.

Embezzlement by public officers generally, see §§ 97-11-25 et seq.

JUDICIAL DECISIONS

1. In general.

A deputy sheriff and his surety are not liable to the sheriff for embezzlement of funds by another deputy appointed by the sheriff, even though he might have discovered the embezzlement. Wittmann v. Harrod, 246 Miss. 832, 152 So. 2d 717 (1963).

A sheriff may proceed against his deputy, by motion, for the failure to pay over costs collected by the deputy on execution, and the motion need not set out the executions if a list of them be filed with it. A deputy who has continued to act as such after the expiration of the time for which he was appointed, by collecting money on executions and making returns on the same in his official character, is estopped to deny, when moved against by his principal, that he was the deputy sheriff. Womack v. Nichols, 39 Miss. 320 (1860).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 52 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 82 (complaint, petition, or declaration against sheriff, deputy, and deputy's surety on deputy's failure to pay judgment creditor moneys levied on attachment).

§ 19-25-27. Deputy liable on motion of sheriff.

When any fine, penalty, or judgment shall be assessed or rendered against a sheriff or his sureties, for or on account of any misconduct of a deputy, the court in which the fine, penalty, or judgment shall be rendered shall, upon motion by the sheriff or his sureties, give judgment against the deputy and his sureties, jointly and severally, for the full amount of all such fines, penalties, or judgments, and shall award execution therefor. The deputy and his sureties shall have five days' notice of such motion.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (10); 1857, ch. 6, art 118; 1871, § 224; 1880, § 329; 1892, § 4114; 1906, § 4666; Hemingway's 1917, § 3083; 1930, § 3313; 1942, § 4238.

§ 19-25-29. Duty of deputy as to process he serves.

When a deputy sheriff has served any writ whatever, he shall indorse thereon the date of the service and the proper return of his proceedings, and subscribe his own name, as well as that of his principal, thereto, as follows:

"________, sheriff, by ________, deputy sheriff". Any deputy sheriff failing to do so, shall be fined by the court, not exceeding One Hundred Dollars ($100.00), on motion, and on five days' notice to the deputy.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (9); 1857, ch. 6, art 117; 1871, § 223; 1880, § 328; 1892, § 4115; 1906, § 4667; Hemingway's 1917, § 3084; 1930, § 3314; 1942, § 4239.

JUDICIAL DECISIONS

1. In general.

That the name signed to the return upon a summons is that of the deputy and not of both the sheriff and deputy is an irregularity amendable upon motion, or subject to review on direct appeal, but not affecting the jurisdiction or rendering a judgment by default subject to attack collaterally. Kelly v. Harrison, 69 Miss. 856, 12 So. 261 (1892).

§ 19-25-31. Riding bailiffs.

Each judge of a circuit, chancery or county court, or a court of eminent domain may, in the judge's discretion, by order entered on the minutes of the court, allow the sheriff riding bailiffs to serve in the respective court of such judge, not to exceed four (4) bailiffs. Any such person so employed shall be paid by the county on allowances of the court on issuance of a warrant therefor in an amount of Fifty-five Dollars ($55.00) for each day, or part thereof, for which he serves as bailiff when the court is in session. No full-time deputy sheriff shall be paid as a riding bailiff of any court. County court judges shall be limited to one (1) bailiff per each court day.

SOURCES: Codes, 1930, § 3311; 1942, § 4236; Laws, 1926, ch. 198; Laws, 1958, ch. 329; Laws, 1977, ch. 357; Laws, 1989, ch. 487, § 1; Laws, 2004, ch. 505, § 7, eff August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505, § 7.

Cross References — Duty of sheriff to attend court with sufficient number of bailiffs, see § 19-25-35.

ATTORNEY GENERAL OPINIONS

Question of whether or not office deputy is included under statute is not clear in that position of office deputy is not recognized by statute; however if position is one in which individual is sworn in as full-time deputy sheriff regardless of duties, said individual would come under payment probation. Davis, Sept. 12, 1990, A.G. Op. #90-0678.

Under the provisions of Section 19-25-31 a judge may hire riding bailiffs or authorize the sheriff to do so. Barlow, March 10, 1995, A.G. Op. #95-0054.

It is the sheriff's duty to appoint bailiffs, subject to the power of the board of supervisors should he fail in this regard, and subject to the power of the court to appoint riding bailiffs and to remove bailiffs for cause. Evans, November 25, 1998, A.G. Op. #98-0687.

This section does not prohibit a part-time deputy from also serving as a riding bailiff provided the jobs are not carried out simultaneously, i.e., the individual may not be paid as a part-time deputy for time he spends serving as a riding bailiff. Additionally, the individual would have to be certified as a part-time deputy by the Board on Law Enforcement Officers Standards and Training and must be compensated less than $125 per week or $ 500 per month for his services as a part-time deputy as set forth in § 45-6-3 (d). Gordon, Sept. 5, 2003, A.G. Op. 03-0462.

§ 19-25-33. Dispensing with appointment of bailiffs.

In all civil cases, where there is a jury, and in criminal case capital, the judge of the county court or circuit court, as the case may be, may, in his discretion, dispense with the appointment of bailiffs.

SOURCES: Codes, 1942, § 4240.5; Laws, 1966, ch. 388, eff from and after passage (approved February 17, 1966).

§ 19-25-35. Duty of sheriff to attend courts, jail committed persons, and to execute orders and decrees.

The sheriff shall be the executive officer of the circuit and chancery court of his county, and he shall attend all the sessions thereof with a sufficient number of deputies or bailiffs. He shall execute all orders and decrees of said courts directed to him to be executed. He shall take into his custody, and safely keep, in the jail of his county, all persons committed by order of either of said courts, or by any process issuing therefrom, or lawfully required to be held for appearance before either of them.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (13); 1857, ch. 6, art 129; 1871, § 235; 1880, § 2278; 1892, § 4116; 1906, § 4668; Hemingway's 1917, § 3085; 1930, § 3315; 1942, § 4240.

Cross References — Judgments and executions in circuit courts, see § 9-7-91.
Duty of sheriff to attend sessions of county courts, see § 9-9-29.
Service of process issued by county court, see § 9-9-29.
Duty of sheriff to execute decrees, see § 11-5-83.
When justice of the peace may direct process to sheriff for execution, see § 11-9-107.
Duty of sheriff to attend upon trial of a habeas corpus, see § 11-43-45.
Service of notices in legal proceedings, see § 13-3-83.
Duty of sheriff to attend meetings of board of supervisors, see § 19-3-25.
Penalty for neglect of duty to keep jail, see § 19-5-1.
Protection of prisoners, see § 19-25-69.
Receiving prisoners committed by justices of the peace, see § 19-25-79.
Duty of sheriff to execute custodial writ against person in need of mental treatment, see § 41-21-67.

JUDICIAL DECISIONS

1. In general.

Summary judgment was properly granted to a district attorney in an action arising from the apprehension of the wrong person for the crime of false pretenses because an assistant district attorney did not exceed the scope of her powers under Miss. Code Ann. § 25-31-6 in providing incorrect identifying information to police; the assistant district attorney was not acting as a sheriff at the time. Stewart v. DA, 923 So. 2d 1017 (Miss. Ct. App. 2005), writ of certiorari denied by 927 So. 2d 750, 2006 Miss. LEXIS 161 (Miss. 2006).

A sheriff's duties with respect to operating a jail and keeping prisoners confined were discretionary in nature and, therefore, the sheriff was entitled to the protection of qualified immunity in a suit to recover for the wrongful death of a victim who was murdered by escaped inmates. McQueen v. Williams, 587 So. 2d 918 (Miss. 1991).

State statutory scheme permitting temporary detention of mentally ill person in jail followed by physical and psychological examination within 24 hours of issuance of writ to take custody, and placing duty on sheriff to keep safe prisoners entrusted to his care, adequately meet procedural due process requirements for purposes of summary judgment motion in federal civil rights action by executor of estate of mentally ill person who died while in jail awaiting examination. Boston v. Lafayette County, 743 F. Supp. 462 (N.D. Miss. 1990).

Without existence of special relationship between sheriff and victim of homicide by jail escapees or sheriff and victim's survivors, survivors have no cause of action against sheriff because sheriff's duty is general public duty. Robinson v. Estate of Williams, 721 F. Supp. 806 (S.D. Miss. 1989).

Sheriff has no authority to release from jail prisoner who has been placed in custody of sheriff by court order without procuring court order allowing release; sheriff who releases prisoner, without court order, on basis of alleged mental and physical problems requiring hospitalization of prisoner, may be held in contempt of court. Coleman v. State, 482 So. 2d 221 (Miss. 1986).

Sheriff who has previously obeyed court orders in releasing prisoners and recording ordered releases on jail docket but who subsequently allows convicted murderer and person convicted of possession with intent to sell controlled substances to leave jail on weekends, without court order and without making jail docket entry to document absence of prisoners, has overstepped bounds of authority and is guilty of criminal contempt. Coleman v. State, 482 So. 2d 219 (Miss. 1986).

It is within the sound discretion of the trial judge to permit the sheriff to remain in the courtroom during the trial of a case, although he is a witness; and a conviction will not be reversed because of the ruling of the trial judge on that question unless it manifestly appears that there has been an abuse of discretion. Fondren v. State, 253 Miss. 241, 175 So. 2d 628 (1965).

There is no liability on the part of a sheriff and his deputy for imprisoning an individual in accordance with the order of the chancellor, though the chancellor's order may have been illegal in that he was without authority to issue it. DeWitt v. Thompson, 192 Miss. 615, 7 So. 2d 529 (1942).

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the event complained of occurred in such other state. McLean v. Mississippi ex rel. Roy, 96 F.2d 741, 119 A.L.R. 670 (5th Cir. 1938), cert. denied, 305 U.S. 623, 59 S. Ct. 84, 83 L. Ed. 399 (1938).

ATTORNEY GENERAL OPINIONS

Youth court judge can place delinquent child in out of state institution pursuant to Interstate Compact on the Placement of Children, Section 43-18-1 et seq. of the Code; but nothing in the Compact specifically authorizes law enforcement officers to maintain custody of persons outside state. Agin, March 2, 1994, A.G. Op. #93-1011.

Once sheriff brings to attention of court that criminal fee is owed to county, this being done by making return on process, sheriff would not be liable under Subsection (3) of Section 25-7-19; sheriff must keep prisoner under terms set out in order of commitment issued by court and can not require that prisoner serve additional time or work additional days in order to pay off court cost and jail fees not included in the court's order of commitment. Price, March 31, 1994, A.G. Op. #93-0795.

Under Section 19-25-35 and 19-25-19, a sheriff has ultimate authority over a deputy appointed by him, even if that deputy is assigned as a bailiff. The sheriff has the authority to transfer or terminate a deputy at will. Best, March 29, 1996, A.G. Op. #96-0166.

A sheriff has no duties or responsibilities concerning the operation of the justice court, except to carry out the court's orders directed to him. Smith, Aug. 1, 1997, A.G. Op. #97-0462.

If a sheriff interferes with the lawful operation or business of the justice court, the judge may issue contempt charges against the sheriff. Smith, Aug. 1, 1997, A.G. Op. #97-0462.

The County Attorney has no obligation to represent a petitioner in a commitment proceeding in Chancery Court. Grant, Dec. 5, 1997, A.G. Op. #97-0758.

RESEARCH REFERENCES

CJS. 80 C.J.S., Sheriffs and Constables §§ 51-90.

§ 19-25-37. Duty of sheriff to execute and return process.

Every sheriff, by himself or his deputy, shall from time to time execute all notices, writs, and other process, both from courts of law and chancery, and all orders and decrees to him legally issued and directed within his county, and he shall make due returns thereof to the proper court. If any sheriff fail herein, he shall, for every offense, be fined by the court to which the writ or process, order or decree, is returnable, in any sum not exceeding One Hundred Dollars ($100.00), on motion, five days' previous notice thereof being first given to said sheriff. The sheriff may be arrested and committed to jail until payment of the fine and cost. The sheriff and his sureties shall likewise be liable to the action of the party aggrieved by such default, for all damages sustained thereby, and also liable to all other penalties provided by law for such offenses.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (7); 1857, ch. 6, art 119; 1871, § 225; 1880, §§ 330, 1828; 1892, § 4117; 1906, § 4669; Hemingway's 1917, § 3086; 1930, § 3316; 1942, § 4241.

Cross References — Jurisdiction of chancery courts over suits for property lost by failure to collect, see Miss. Const. Art. 6, § 161.

Judgments and executions of circuit courts, see § 9-7-91.

Execution of writs issued by county courts, see § 9-9-29.

Decrees of chancery courts, see § 11-5-83.

When justice of the peace may direct process to sheriff for execution, see § 11-9-107.

Remedies of plaintiff when sheriff's return states that he has been kept off by force, see § 13-3-73.

Fees of sheriffs, see §§ 25-7-19, 25-7-21.

Collection of income taxes, see §§ 27-7-55 et seq.

Collection of corporation franchise taxes, see §§ 27-13-29 et seq.

Collection of sales taxes, see § 27-65-57.

Collection of tobacco taxes, see § 27-69-41.

Collection of employer's unemployment compensation contributions, see § 71-5-367.

JUDICIAL DECISIONS

1. In general.

No reversible error was found in trial judge excluding testimony directed toward identity of person who actually served summons; one acting generally as deputy sheriff, under written appointment from sheriff, although not having qualified according to law, is de facto officer and between third parties his actions are valid; and, in absence of proof to contrary, it is presumed that person whose name was appended to return on writ as special deputy was duly authorized as such. Pointer v. Huffman, 509 So. 2d 870 (Miss. 1987).

On payment by sheriff or his sureties of damages for failure to execute process, original judgment and execution vests in sheriff or sureties, and they may recover thereon; it is not contrary to public policy for sheriff to purchase execution and judgment when motion is made against him for failure to execute it. Wilkinson v. Hutto, 157 Miss. 358, 128 So. 93 (1930).

Loss for damages for wrongful levy falls on sheriff, he not having protected himself with indemnifying bond when making levy. Breithaupt v. Dean, 144 Miss. 292, 109 So. 792 (1926).

A sheriff holding an attachment writ against a corporation may refuse the demand of the plaintiff to levy it on the property of the individuals who compose it and manage its affairs, and by so doing he does not incur liability to the plaintiff. And this is so notwithstanding it may be shown that if the levy had been made the property might thereafter in a chancery proceeding have been subjected to the demand of the plaintiff. State ex rel. Owen v. Marshall, 69 Miss. 486, 13 So. 668 (1891).

In a suit under the section [Code 1942, § 4241], on the sheriff's bond for failing to return executions, the validity of the executions must be decided by the court, not the jury. In such cases, if the executions be valid, the amount of the judgments furnish prima facie the measure of recovery, and it devolves upon the defendants to show the insolvency of the execution-debtors. Dailey v. State, 56 Miss. 475 (1879).

A judgment nisi, imposing a fine upon a sheriff for a failure to return a bench warrant, is void, if entered without notice first given to him. Jenkins v. State, 33 Miss. 382 (1857).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 24, 53 et seq..

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 21(complaint, petition, or declaration against surety to recover unsatisfied judgment against defaulting sheriff and deputy); Form 31 (complaint, petition, or declaration against sheriff for failure to serve summons); Form 32 (complaint, petition, or declaration against sheriff for neglect of deputy in failing to levy execution); Form 34 (answer that sheriff's failure to levy attachment was justified by plaintiff's refusal to indemnify sheriff against third-party claim); Form 91 (complaint, petition, or declaration against sheriff for failure to return execution); Form 92 (complaint, petition, or declaration against sheriff and deputy for deputy's

neglect to return writ and pay to judgment creditor proceeds received on execution).

CJS. 80 C.J.S., Sheriffs and Constables § 51-62.

§ 19-25-39. Sheriff may employ power of the county in executing process.

If the sheriff finds that resistance will be made against the execution of any process, he shall forthwith go in his proper person, taking the power of the county if necessary, and execute the same. He shall certify to the court the names of the persons making resistance, their aiders, assistants, favorers, and procurers.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (14); 1857, ch. 6, art 130; 1871, § 236; 1880, § 341; 1892, § 4131; 1906, § 4683; Hemingway's 1917, § 3100; 1930, § 3330; 1942, § 4255.

Cross References — Authority to employ power of county to keep the peace generally, see § 19-25-67.

Authority to make arrests generally, see § 99-3-1.

Duty of private person to assist in making arrests, see § 99-3-5.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 43-45, 50, 61.

§ 19-25-41. Liability of sheriff for failure to return execution.

If any sheriff or other officer properly authorized to act for him, shall fail to return any execution to him directed, on the return day thereof, the plaintiff in execution shall be entitled to recover judgment against the sheriff or other officer, and his sureties, for the amount of the execution and all costs, with lawful interest thereon until the same shall be paid, and with five percent (5%) on the full amount of the judgment as damages, to be recovered by motion before the court to which the execution is returnable, on five days' notice first being given thereof. However, after the sheriff or other officer, or the sureties, shall have paid the amount of money and damages recovered, then the original judgment and execution shall be vested in the officer or his sureties paying the recovery and damages, for his or their benefit, and execution may issue on the original judgment, in the name of the plaintiff, for the use and benefit and at the cost and charges of the officer or his sureties in whom the judgment may be so vested. Nothing herein contained shall affect any other remedy against officers for failing to return executions, and the remedy given by this section shall apply in favor of county treasuries, clerks, and other officers and witnesses, for the recovery of all jury taxes, fees, and costs, with interest and damages thereon, in the same manner as to plaintiffs in execution. In any proceeding against a sheriff or other officer for failing to return any process, proof that the process was put in the post office, duly addressed to him, and that the postage was paid thereon, shall be prima facie evidence of the receipt thereof by the officer.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 7 (6); 1857, ch. 6, art 121; 1871, § 227; 1880, § 331; 1892, § 4118; 1906, § 4670; Hemingway's 1917, § 3087; 1930, § 3317; 1942, § 4242.

Cross References — Jurisdiction of chancery court over suits on bonds of public officers, see Miss. Const. Art. 6, § 161.

Liability of sheriff for neglect of duty in respect to executions for fines, penalties and forfeitures, see §§ 11-7-221, 99-19-69.

Remedy against sheriff for failure to account for fine, penalty, etc., see §§ 11-7-219, 99-19-67.

Remedy against constable or other officer who fails to execute and return execution, see § 19-19-9.

Civil liability for failure to perform duty generally, see § 25-1-45.

Penalty against sheriff who refuses to return person committing offense in his view or knowledge, see § 97-11-35.

Penalty for failure to perform any duty generally, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.
2. Matters affecting liability.
3. —In general.
4. —The return.
5. —Validity of judgment upon which execution issued.
6. Proceedings to enforce liability.
7. —In general.
8. —Burden of proof.
9. —Statute of limitations.
10. Payment or purchase of execution by sheriff.

1. In general.

This statute [Code 1942, § 4242] is highly penal so that very slight circumstances are held to exempt officers from its operation, and one seeking to recover hereunder must bring his case clearly within its terms. W.T. Rawleigh Co. v. Causey, 195 Miss. 842, 16 So. 2d 397 (1944).

A sheriff is entitled to a benefit under the section [Code 1942, § 4242] only when he brings himself strictly within its terms. Staples v. Fox, 45 Miss. 667 (1871).

2. Matters affecting liability.

3. —In general.

Plaintiff was properly denied its motion for judgment against a sheriff and his surety arising out of the failure to levy execution against defendant, where the deputy sheriff was as diligent as possible in trying to levy on the writ of execution inasmuch as he made eight or 10 trips and contacted all he knew to secure information about property on which the levy possibly could have been made. Nitto Denko Am., Inc. v. ABCD Tapes, 419 So. 2d 204 (Miss. 1982).

Mere fact that the seal was placed on a writ of execution upon that part of the document containing the cost bill instead of upon the body of the writ proper, did not render it invalid, so as to excuse sheriff's failure to return the writ on return day. W.T. Rawleigh Co. v. Howell, 196 Miss. 489, 18 So. 2d 134 (1944).

Where the sheriff wrote to a judgment creditor in Illinois two weeks before the first day of the court, demanding a bond to indemnify him against liability for levying an execution and advising such creditor that the execution would be held unexecuted until such bond was furnished, and the creditor failed to answer, two weeks was not an unreasonable time for the sheriff to wait for the creditor to furnish the bond so as to charge the sheriff with liability for failure to return the execution on the return day thereof. W.T. Rawleigh Co. v. Foxworth, 194 Miss. 205, 11 So. 2d 919 (1943).

In an action against a former sheriff and his successor, and their sureties, to recover under this section [Code 1942, § 4242] for their failure to return a writ of execution on return day thereof pursuant to its command, the judgment creditor was not entitled in a court of law to a discovery from the sheriffs respectively, as to which of them was liable. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

There could be no recovery in a proceeding to recover the statutory liability for failure to make return of a writ of execution on return day thereof pursuant to its command against a former sheriff who resigned before such return day, predicated upon his failure to deliver the writ to his successor. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

A former sheriff and his sureties were not liable for failure to return a writ of execution on return day pursuant to its command, where the violation did not take place while he was in office because of his resignation before the return day thereof. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

In proceeding against sheriff for failure to return execution on its return day, evidence held insufficient to meet sheriff's burden of proving his allegation that he withheld execution until after return day at direction, or by agreement, of judgment creditors. Everett v. Duckworth, 179 Miss. 516, 176 So. 387 (1937).

Officers will be exempted from the operation of statute making such officers liable to execution plaintiff for failure to return execution by very slight circumstances, including any act done by such execution plaintiff which directly or indirectly contributes to the omission of duty complained of. Crawford v. Bank of Sem. ex rel. Williams, 178 Miss. 129, 172 So. 750 (1937).

Execution plaintiff who gave sheriff execution to levy and, after sheriff refused to levy unless bond were posted, took the papers back and made no further demand for levy held to have lost, by accepting return of the papers, his statutory rights to recover the original judgment from the sheriff, irrespective of either party's mistake of law or fact, since plaintiff thereby prevented such sheriff from subsequently correcting his error. Crawford v. Bank of Sem. ex rel. Williams, 178 Miss. 129, 172 So. 750 (1937).

Admission by husband-agent of judgment creditor before time for return of execution that nothing could be made thereon relieved sheriff from statutory penalty. Watson v. Boyett, 151 Miss. 726, 118 So. 629 (1928).

It was said in Morehead v. Holliday, 1 S & M 625, that up on the failure to return the execution upon its return day the sheriff was liable absolutely and without exception. In Cox v. Ross, 56 M 481, it is intimated that the act of God, physical impossibility, or the like, would excuse; while it is now decided that if the plaintiff contribute, directly or indirectly, to the omission of duty complained of, he cannot succeed. Simms, Billups & Co. v. Quinn, 58 Miss. 221 (1880).

4. —The return.

The trial court properly found that there were insufficient circumstances to relieve a sheriff of liability for his failure to return a special writ of execution by the return date, as required by § 19-25-41, and thus the sheriff was liable to the judgment creditor for the value of the eight specific personal items enumerated in the writ of execution. Bonds v. Bonds, 453 So. 2d 1020 (Miss. 1984).

A successor sheriff is not liable for damages for failure to return executions on the return date, where the executions were delivered to former sheriff who retained them in his possession and never placed the execution in the hands of the successor sheriff after her qualification as sheriff. Parks v. Herrington, 213 Miss. 317, 56 So. 2d 836 (1952).

The rule is that where a process or writ is placed in the hands of a sheriff or constable for service or execution, he is liable if he fails to return the same within the time which is allowed by law for the making of his return thereon, and the fact that a return is made after the expiration of such time does not relieve him of liability for his default; but in order to enforce such liability, it must be shown that the writ was actually placed in his hands for execution, and that he actually failed to return it on the return date. W.T.

Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

Notation by deputy sheriff on execution that it was executed on certain date, held that execution was set aside on subsequent date held not return in conformity to statute. McIntosh v. Munson Rd. Mach. Co., 167 Miss. 546, 145 So. 731 (1933).

Clerk's failure to properly indorse date of filing sheriff's return of execution will not render sheriff liable for statutory penalty. Jeffreys v. Alexander, 151 Miss. 447, 118 So. 301 (1928).

Evidence as to whether execution was returned by sheriff on or before return day held to raise issue of fact for chancellor. Jeffreys v. Alexander, 151 Miss. 447, 118 So. 301 (1928).

Parol evidence is admissible to show that indorsement or file mark of clerk on sheriff's return of execution was erroneous. Jeffreys v. Alexander, 151 Miss. 447, 118 So. 301 (1928).

It is in the discretion of the court to allow the officer to amend his return, even after motion, if no intervening rights have been acquired by virtue or upon the faith of the original return. Howard v. Priestly, 58 Miss. 21 (1880).

Returning an execution nulla bona too soon is not within the statute. Tapp v. Bonds, 57 Miss. 281 (1879).

The fact that the sheriff had the execution in his pocket, or in his desk in the court room, with the proper indorsement on it of how he had executed it, was not a return of the process, although the plaintiff in execution was an attorney of the court, and could easily have obtained the execution by applying at the sheriff's desk, and may have known this. Beall v. Shattuck, 53 Miss. 358 (1876).

It is unnecessary for the return of the officer to show affirmatively the failure to levy. Garrett v. Hamblin, 19 Miss. (11 S. & M.) 219, 49 Am. Dec. 53 (1848).

The indorsement of a return on an execution is not prima facie evidence that it was returned on the return day. The return of the execution into the office of the clerk is a fact in pais. Izod v. Addison, 6 Miss. (5 Howard) 432 (1841).

5. —Validity of judgment upon which execution issued.

On collateral attack, judgment must be void to avail sheriff of relief from his liability for failure to return execution, although motion to quash execution is made. McIntosh v. Munson Rd. Mach. Co., 167 Miss. 546, 145 So. 731 (1933).

That judgment by default was rendered when there was plea on file and was set aside by court at subsequent term did not relieve sheriff from liability for failure to return execution, such judgment being valid as against collateral attack. McIntosh v. Munson Rd. Mach. Co., 167 Miss. 546, 145 So. 731 (1933).

No liability where the judgment is void. Union Motor Car Co. v. Cartledge, 133 Miss. 318, 97 So. 801 (1923).

Liability cannot be avoided on the ground judgment was invalid, such defense being a collateral attack. Green v. Taylor, 111 Miss. 232, 71 So. 375 (1916).

6. Proceedings to enforce liability.

7. —In general.

Testimony of circuit clerk that it was his custom to deliver executions to sheriff's office at the time of issuance, although he could not remember the exact time of delivery, when aided by presumption that the clerk did his duty and delivered the execution to the sheriff, was sufficient to establish prima facie case that the execution was actually delivered to the sheriff before its return date. W.T. Rawleigh Co. v. Causey, 195 Miss. 842, 16 So. 2d 397 (1944).

Movant, seeking judgment against sheriff and sureties on his official bond for failure of the sheriff to return an execution by the return date thereof, must show prima facie a delivery in fact of the execution to the sheriff before its return date. W.T. Rawleigh Co. v. Causey, 195 Miss. 834, 16 So. 2d 395 (1944).

In proceedings to obtain judgment against sheriff for failure to file execution before return day thereof, presumption that circuit clerk delivered writ of execution to sheriff with reasonable promptness following issuance thereof was neutralized by presumption of law that if sheriff had received the writ before return day, he would have returned it within the time provided by law, in the absence of any testimony on the subject by the clerk or showing of sheriff's docket in which he is required to show when such writ is received. W.T. Rawleigh Co. v. Causey, 195 Miss. 834, 16 So. 2d 395 (1944).

While this section [Code 1942, § 4242] does not require either allegation or proof of damages sustained, nevertheless, it is necessary hereunder to allege and prove that the sheriff violated his duty while in office by not making a return on the writ of the return day thereof. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

A movant under this section [Code 1942, § 4242], seeking to charge a former sheriff and his successor, and their sureties, with liability for failure to return a writ of execution on return day pursuant to its command, could not maintain an equitable bill to discover which of them was liable since a person is not obligated to reveal information in such a bill which may subject him to a forfeiture or penalty. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

Allegations of a motion to charge a former sheriff and his successor, and their sureties, with statutory liability for failure to make return of a writ of execution on return day thereof, to the effect that movant did not know when or how the writ of execution was delivered from the former sheriff to his successor, if the same was delivered, and that the defendants refused to inform movant thereof and movant was unable to obtain such information otherwise, were insufficient on demurrer, since if it be presumed that the former sheriff delivered the writ to his successor in accordance with his statutory duty in the event of resignation, the presumption of equal dignity that his successor would have returned the writ in time if he had received it in time would also apply, together with the presumption that the successor gave the resigning sheriff a receipt as required by law which movant would be entitled to inspect, or movant could have inspected the public records of the sheriff's office to ascertain the facts which such records are presumed to disclose as to when a succeeding sheriff received process. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

Formal pleadings are not required on motion for statutory damages for failure of sheriff to return execution. Watson v. Boyett, 151 Miss. 726, 118 So. 629 (1928).

Evidence that execution defendant had property subject to levy held properly excluded on motion for damages for sheriff's failure to return execution. Watson v. Boyett, 151 Miss. 726, 118 So. 629 (1928).

The motions are determinable in the court to which the process is returnable, and an application to change the venue to the county of the sheriff's residence should be disallowed. Tapp v. Bonds, 57 Miss. 281 (1879).

A motion for judgment can be maintained against the sheriff and his sureties after his term of office has expired. Tapp v. Bonds, 57 Miss. 281 (1879).

Under the section [Code 1942, § 4242], a plea to a motion that the plaintiff in execution had not suffered damage from the failure to return the execution is not a bar to the motion. Cox v. Ross, 56 Miss. 481 (1879).

The motion for judgment against the sheriff not required to be made at the term to which the execution is returnable. Steen v. Briggs, Lacoste & Co., 11 Miss. (3 S. & M.) 326 (1844).

Nor is a plea good which avers that the officer had levied the writ upon certain property, sold it, and had the money ready to pay over. Morehead v. Holliday, 9 Miss. (1 S. & M.) 625 (1844).

No other process is necessary than service of notice of the motion; and it is unnecessary to set out the bond in the motion, but it is sufficient to describe it and state the sureties. Lewis v. Garrett's Adm'rs, 6 Miss. (5 Howard) 434 (1841).

After a sheriff and his sureties have appeared and contested a motion on its merits, it is too late to object to the regularity of the notice or the sufficiency of the motion itself. Izod v. Addison, 6 Miss. (5 Howard) 432 (1841).

8. —Burden of proof.

In proceeding against sheriff for failure to return execution on its return day, sheriff has burden of proving that judgment creditor directed withholding of execution until after return day, and, if sheriff does not comply with established method of returning execution, sheriff has burden of establishing, by preponderance of evidence, his excuse for such withholding. Everett v. Duckworth, 179 Miss. 516, 176 So. 387 (1937).

Judgment creditor in action against sheriff for failure to return execution must prove failure to return execution by return day. Jeffreys v. Alexander, 151 Miss. 447, 118 So. 301 (1928).

The plaintiff must prove the existence of his judgment on the hearing of the motion. Cox v. Ross, 56 Miss. 481 (1879).

9. —Statute of limitations.

Statute is penal and therefore remedy barred by one year statute of limitations. Bank of Hickory v. May, 119 Miss. 239, 80 So. 704 (1919).

10. Payment or purchase of execution by sheriff.

On payment by sheriff or his sureties of damages for failure to execute process, original judgment and execution vests in sheriff or sureties, and they may recover thereon; it is not contrary to public policy for sheriff to purchase execution and judgment when motion is made against him for failure to execute. Wilkinson v. Hutto, 157 Miss. 358, 128 So. 93 (1930).

A sheriff who voluntarily pays an execution, there being no failure to return it, cannot enforce it under the section. Morris v. Lake, 17 Miss. (9 S. & M.) 521, 48 Am. Dec. 724 (1848).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 91(complaint, petition, or declaration against sheriff for failure to return execution); Form 92 (complaint, petition, or declaration against sheriff and deputy for deputy's neglect to return writ and pay to judgment creditor proceeds received on execution).

CJS. 80 C.J.S., Sheriffs and Constables §§ 110-117, 135.

Law Reviews. 1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

§ 19-25-43. Liability of sheriff as to final process of chancery court.

A sheriff or other officer properly authorized to act for him shall not return an execution or attachment for not performing a decree in chancery to the office whence it issued without noting thereon how he has executed the same, unless by the express direction, in writing, of the plaintiff, his agent or attorney. If a sheriff or other officer, not having such directions, shall return such execution or attachment without noting thereon how he has executed the same, he and his sureties shall be subject to all the liabilities, fines, and penalties imposed on a sheriff for failing to return an execution, recoverable in the same manner. When any execution shall be settled, or the money due thereon received, wholly or in part, by an officer, he shall make a statement of the amount thereof on the execution, including his own fees and commissions, and return the same with the execution.

SOURCES: Codes, 1857, ch. 6, art 122; 1871, § 228; 1880, § 332; 1892, § 4119; 1906, § 4671; Hemingway's 1917, § 3088; 1930, § 3318; 1942, § 4243.

Cross References — Civil liability for failure to perform duty generally, see § 25-1-45.

Penalty for failure to perform any duty generally, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.

In proceeding against sheriff for failure to return execution on its return day, sheriff has burden of proving that judgment creditor directed withholding of execution until after return day, and, if sheriff does not comply with established method of returning execution, sheriff has burden of establishing, by preponderance of evidence, his excuse for such withholding. Everett v. Duckworth, 179 Miss. 516, 176 So. 387 (1937).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. Proof of Facts 2d 715, Sheriff's Negligent Failure to Attach Property.

§ 19-25-45. Liability of sheriff for failure to pay over money collected and similar omissions.

If any sheriff or other officer properly authorized to act for him, shall collect, by virtue of an execution or attachment, the whole or a part of the money which, by the writ, he is required to levy, and shall not immediately pay the same to the party entitled thereto, or his attorney, on demand made; or if any sheriff or other officer properly authorized to act for him, shall voluntarily, and without authority, omit to execute such process, or to levy the money therein mentioned, or do or omit anything which would entitle the plaintiff to recover from the sheriff or other officer by any action the debt, damages, or costs in the execution mentioned; then, in either of said cases, the sheriff or other officer and his sureties shall be liable to pay to the plaintiff in the execution or attachment, or to any person entitled to the money, or a part thereof, the full amount of the money due upon the execution or attachment, with twenty-five percent (25%) damages, and lawful interest until paid, to be recovered with costs by motion before the court to which the execution is returnable, on five days' notice of the motion to the sheriff or other officer and his sureties. In case the sheriff or other officer have received only a part of the money due by the execution or attachment, and be not otherwise liable for the whole amount thereof, the recovery shall be limited to the amount received, with damages and interest. The court, at the request of either party, in case any matters of fact shall be in issue between them, shall cause a jury to be impaneled to try the same, and if the verdict be against the sheriff or other officer, judgment shall be entered up, with damages and costs, as above directed.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 7 (1); 1857, ch. 6, art 123; 1871, § 229; 1880, § 333; 1892, § 4120; 1906, § 4672; Hemingway's 1917, § 3089; 1930, § 3319; 1942, § 4244.

Cross References — Remedy against sheriff for failure to return fine, penalty, or forfeiture, see §§ 11-7-219, 99-19-67.

Procedure when third person claims the money collected, see §§ 11-23-1, 11-23-3.

Similar proceedings against attorneys at law for failing or refusing to pay money received for a client, see § 11-49-3.

Failure of constable or other officer to pay over money collected on execution issued by justice of the peace, see 19-19-11.

Liability of sheriff for failure to pay over excess money collected, see § 19-25-51.

Property to be delivered to successor sheriff, see § 19-25-57.

Civil liability of officer for failure to perform duty, see § 25-1-45.

Law enforcement officers purchasing or acquiring confiscated property, see § 25-1-51.

JUDICIAL DECISIONS

1. In general.
2. Failure to pay over money.
3. Omission to execute process.

1. In general.

Where a debtor's trailer was placed in the constructive possession of the sheriff by the direction of the creditor bank which caused execution to issue against the trailer, but actual possession was not taken by the sheriff because the bank did not wish to incur the expense of removing the trailer to another place of storage, the loss resulting from the subsequent removal of the trailer to parts unknown was not chargeable to the sheriff or to his surety, the circumstance that the default of the sheriff was occasioned by the request of the bank being sufficient to exempt the sheriff from the operation of this highly penal statute. Merchants Nat'l Bank v. Navarrette, 247 So. 2d 702 (Miss. 1971).

One seeking to recover under this highly penal statute must bring his case clearly within its terms. Bowers v. Conn, 226 Miss. 832, 85 So. 2d 583 (1956).

Under this section [Code 1942, § 4244] the word voluntarily means intentionally. Bowers v. Conn, 226 Miss. 832, 85 So. 2d 583 (1956).

Where a judgment was secured in one county and writ of execution was sent to sheriff of another county for service and then was returned to the creditor's attorney under the mistaken belief that the judgment should have been enrolled in the first county and the creditor's attorney filed the unexecuted writ in the first county and the sheriff had no chance to correct the mistake, the sheriff was exempt from operation of this section [Code 1942, § 4244] because the process was not returned to the sheriff who had no opportunity to correct the mistake. Bowers v. Conn, 226 Miss. 832, 85 So. 2d 583 (1956).

2. Failure to pay over money.

A sheriff cannot be compelled by motion to pay over money to a judgment-creditor who appears by the writ to be entitled to it, while a bill in chancery, filed by a third party, claiming the fund, is pending against the creditor and himself. Howard v. Proskauer, 57 Miss. 247 (1879).

A United States marshal and surety cannot be proceeded against under a state statute that provides that if the sheriff should fail to pay over to a plaintiff money collected by execution, the money collected with 25% damages and 8% interest may be recovered against such sheriff and his sureties by motion before the court to which such execution was returnable. Gwin v. Breedlove, 43 U.S. 29, 2 How. 29, 11 L. Ed. 167 (1844).

The failure of the sheriff to pay over money made, is a breach of his official bond. In proceedings against the sheriff under the section, no other process is necessary than service of notice of the motion, and it is unnecessary to set out the bond in the motion; it is sufficient to describe it and state the sureties. Lewis v. Garrett's Adm'rs, 6 Miss. (5 Howard) 434 (1841).

3. Omission to execute process.

Court interpreting statute respecting procedure against sheriff and other officers failing to do certain acts must do so in light of general principles of procedural law on subject and adopt construction harmonizing it with general principles. Caperton v. Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

Statute providing for summary motion against sheriff and other officers cannot be enlarged by construction. Caperton v.

Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

Penalties prescribed by statute relating to failure of sheriff or other officers to do certain acts cannot be inflicted in independent action against an officer. Caperton v. Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

Only a sheriff or other officer under duty to court out of which process has issued, and under such duty at time of alleged default by officer, may be proceeded against by summary motion under statute. Caperton v. Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

New parties, including officers not officers of court trying case, may be brought in only by amendment or petition so they may have opportunity to make formal answer to amendment or petition. Caperton v. Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

Where automobile was attached under attachment sued out in justice court and judgment therein was for defendant, and constable later delivered automobile to defendant, who departed from State, and plaintiff subsequently appealed to circuit court and recovered judgment, liability of constable could not be reviewed in circuit court under summary motion. Caperton v. Winston County Fair Ass'n, 169 Miss. 503, 153 So. 801 (1934).

Motion, in justice court from which execution issued and circuit court to which cause was appealed, to charge sheriff of another county and surety with sheriff's failure to levy execution could not be transferred to circuit court of county of sheriff's residence. Womack v. Richardson, 168 Miss. 347, 151 So. 173 (1933).

Motion to set aside justice court judgment, and appeal, more than ten days after rendition of judgment, were void, and did not justify sheriff's refusal to levy execution on judgment. Womack v. Richardson, 168 Miss. 347, 151 So. 173 (1933).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 41.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 81 (complaint, petition, or declaration against sheriff and his surety for failure to pay judgment creditor moneys collected on execution sale); Form 92, (complaint, petition, or declaration against sheriff and deputy for deputy's neglect to return writ and pay to judgment creditor proceeds received on execution).

17 Am. Jur. Proof of Facts 2d 715, Sheriff's Negligent Failure to Attach Property.

CJS. 80 C.J.S., Sheriffs and Constables §§ 256-275.

§ 19-25-47. Liability of sheriff for false return on any process.

If a sheriff or other officer properly authorized to act for him, make a false return on any process whatever, he shall, for every such offense, be liable to pay the sum of Five Hundred Dollars ($500.00) to the plaintiff named in the process, such sum being recoverable against the officer and his sureties, or the officer alone, by motion before the court to which the process is returnable, after five days' notice of such motion to the officer and his sureties. If the returns alleged to be false do not appear on the face of the record to be so, the court shall, at the request of either party, impanel a jury to ascertain whether the return be false or not, on an issue joined under the direction of the court. If the jury find that the return is false, judgment shall be entered for the said sum against the officer and his sureties, with costs.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 7 (4); 1857, ch. 6, art 120; 1871, § 226; 1880, § 334; 1892, § 4121; 1906, § 4673; Hemingway's 1917, § 3090; 1930, § 3320; 1942, § 4245.

Cross References — Liability of constable or other officer for making false return, see § 19-19-13.

Civil liability of officer for failure to perform duty generally, see § 25-1-45.

Liability of sheriff for failure to perform duty generally, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4245] is highly penal, and very slight circumstances will exempt officers from its operation, and one seeking to recover the penalty thereunder must bring his case clearly within its terms. W.T. Rawleigh Co. v. Brantley, 197 Miss. 244, 19 So. 2d 808, 157 A.L.R. 188 (1944).

Making of a "false return" to writ of execution within meaning of this section [Code 1942, § 4245] implies conduct on the part of the officer which stigmatizes his representation of fact as a dishonest one, calculated to deceive another by a suppression of truth, the return being a mere artifice employed to suppress the truth for the purpose of deception. W.T. Rawleigh Co. v. Brantley, 197 Miss. 244, 19 So. 2d 808, 157 A.L.R. 188 (1944).

Statement in sheriff's return on writ of execution that "after diligent search and inquiry I have failed to find anything in my county upon which I could levy" is not equivalent to a statement that none of the defendants had any property, real or personal, so as to render return a "false return" within the meaning of this section [Code 1942, § 4245], it being shown that one of the defendants owned a tract of land, especially where, on the day before making the return, the sheriff, who knew about the land, informed the attorney of the judgment creditor that the defendant claimed a homestead exemption and that the property was subject to a mortgage, the existence and quantity of the land being clearly understood by both the sheriff and the attorney. W.T. Rawleigh Co. v. Brantley, 197 Miss. 244, 19 So. 2d 808, 157 A.L.R. 188 (1944).

The section is penal, and is against the officer committing the act. The sheriff is not liable to this penalty for the act of his deputy. The state can maintain the motion in a proper case. State v. Nichols, 39 Miss. 318 (1860).

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 44.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Forms 93, 94 (complaint, petition, or declaration against sheriff for false return of execution).

CJS. 80 C.J.S., Sheriffs and Constables §§ 137-167.

§ 19-25-49. Liability of sheriff for not returning money advanced for executing process in case of its non-execution.

If any sheriff fails to execute any process for the execution of which his fees have been paid in advance, and does not return with the writ the money so advanced, he shall be liable on his bond, if the process issued from the circuit or chancery court, for Three Hundred Dollars ($300.00), and if from a court of a justice of the peace, for Two Hundred Dollars ($200.00), which sum may be recovered on the motion of the party at whose instance the process issued, in the court from which it issued, on five days' notice to the officer and his sureties.

SOURCES: Codes, 1892, § 4122; 1906, § 4674; Hemingway's 1917, § 3091; 1930, § 3321; 1942, § 4246.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Civil liability of officer for failure to perform duty generally, see § 25-1-45.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 41.

17 Am. Jur. Proof of Facts 2d 715, Sheriff's Negligent Failure to Attach Property.

CJS. 80 C.J.S., Sheriffs and Constables §§ 226-255.

§ 19-25-51. Liability of sheriff for failing to pay excess money to defendants.

When the amount of the sale of property under execution or attachment shall exceed the debt, damages, interest, and costs for which the execution issued, the sheriff or other officer properly authorized to act for him shall pay the surplus to the debtor or other person entitled to receive the same. If the sheriff or other officer fails or refuses to pay such surplus when required, to the person entitled thereto, he and his sureties shall be liable to the like penalty and judgment in favor of the person entitled to the surplus, as is authorized by law in favor of the plaintiff, against the sheriff and his sureties for not paying over money levied on an execution.

SOURCES: Codes, 1857, ch. 6, art 124; 1871, § 230; 1880, § 335; 1892, § 4123; 1906, § 4675; Hemingway's 1917, § 3092; 1930, § 3322; 1942, § 4247.

Cross References — Liability of sheriff for failure to pay over money collected, see § 19-25-45.

Civil liability of officer for failure to perform duty generally, see § 25-1-45.

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police, and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

CJS. 80 C.J.S., Sheriffs and Constables §§ 226-255.

§ 19-25-53. Unexecuted writs and list of prisoners to be delivered to successor sheriff.

Every sheriff, at the expiration of his term of office, or on resigning, or otherwise vacating the office, shall deliver all writs in his possession unexecuted to his successor, who shall give a receipt for the same, and shall execute and return them. The sheriff shall also deliver to his successor a certified list of the names of all persons confined in the jail, and the cause of their commitment, and a copy of said list shall be filed in the office of the clerk of the circuit court by the sheriff receiving the same.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (12); 1857, ch. 6, art 125; 1871, § 231; 1880, § 336; 1892, § 4124; 1906, § 4676; Hemingway's 1917, § 3093; 1930, § 3323; 1942, § 4248.

Cross References — Property to be delivered to successor sheriff, see § 19-25-57.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4248] the duty is imposed upon a sheriff, at the expiration of his term of office or on resigning, to deliver a writ of execution to his successor, if it is unexecuted at that time. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

There could be no recovery in a proceeding to recover the statutory liability for failure to make return of a writ of execution on return day thereof pursuant to its command against a former sheriff who resigned before such return day, predicated upon his failure to deliver the writ to his successor. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

Allegations of a motion to charge a former sheriff and his successor, and their sureties, with statutory liability for failure to make return of a writ of execution on return day thereof, to the effect that movant did not know when or how the writ of execution was delivered from the former sheriff to his successor, if the same was delivered, and that the defendants refused to inform movant thereof and movant was unable to obtain such information otherwise, were insufficient on demurrer, since if it be presumed that the former sheriff delivered the writ to his successor in accordance with his statutory duty in the event of resignation, the presumption of equal dignity that his successor would have returned the writ in time if he had received it in time would also apply, together with the presumption that the successor gave the resigning sheriff a receipt as required by law which movant would be entitled to inspect, or movant could have inspected the public records of the sheriff's office to ascertain the facts which such records are presumed to disclose as to when a succeeding sheriff received process. W.T. Rawleigh Co. v. Hester, 190 Miss. 329, 200 So. 250 (1941).

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police, and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-55. Mittimus and discharge warrants preserved and turned over to successor sheriff.

All warrants, writs, orders, process, and precepts of any kind, or the attested copies thereof, by which any prisoner may be committed to or enlarged from any jail, shall be filed in their order of time, and kept by the sheriff. Upon the death, removal, resignation, or expiration of office of a sheriff, all of such warrants, writs, orders, process, or precepts, or the attested copies thereof, shall be delivered to his successor in office, on demand by him made, under the penalty of Three Hundred Dollars ($300.00), to be recovered of the sheriff going out of office, and his sureties, by motion before the circuit court of the county, after five days' notice thereof.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (19); 1857, ch. 6, art 128; 1871, § 234; 1880, § 337; 1892, § 4125; 1906, § 4677; Hemingway's 1917, § 3094; 1930, § 3324; 1942, § 4249.

Cross References — Duty of sheriff to keep jail docket, see §§ 19-25-63, 47-1-21.

Information stated in mittimus generally, see § 99-5-31.

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-57. Property delivered to successor sheriff.

Every sheriff who shall have levied an execution or other process on goods and chattels which shall remain in his possession unsold at the expiration of his term of office, shall deliver the same to his successor in office, taking his receipt therefor. The sheriff to whom such goods and chattels are delivered shall sell the same in like manner as his predecessor ought to have done had he remained in office, and shall pay the proceeds of the sale to the parties entitled thereto. If any sheriff fails to deliver to his successor any goods and chattels so levied on and remaining in his hands, on demand therefor, the plaintiff in the execution or other process, upon five days' notice thereof, may move the court from which the writ issued, against the sheriff so failing, and his sureties and their executors and administrators, upon which motion judgment shall be entered for the amount of the execution or other process, with interest, and five percent (5%) damages and costs.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (11); 1857, ch. 6, art 126; 1871, § 232; 1880, § 338; 1892, § 4126; 1906, § 4678; Hemingway's 1917, § 3095; 1930, § 3325; 1942, § 4250.

Cross References — Delivery of unexecuted writs and lists of prisoners to successor sheriff, see § 19-25-53.

Delivery of property held by sheriff who has been appointed administrator of an estate, see § 91-7-83.

JUDICIAL DECISIONS

1. In general.

Statute respecting sheriff's delivering goods in his possession to successor is penal statute, and must be strictly construed. Union Motor Car Co. v. Farmer, 161 Miss. 847, 138 So. 579 (1932).

Motion can be made under statute respecting sheriff's failure to deliver goods to successor only under conditions named therein. Union Motor Car Co. v. Farmer, 161 Miss. 847, 138 So. 579 (1932).

Where sheriff seizing automobile had delivered it in replevin proceeding before he went out of office, statute authorizing motion against sheriff and surety for amount of execution held inapplicable. Union Motor Car Co. v. Farmer, 161 Miss. 847, 138 So. 579 (1932).

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-59. Mesne process docket kept by sheriff.

It shall be the duty of every sheriff to keep a record, to be called the "Mesne Process Docket," in which he shall note each writ, other than an execution, received by him for service, specifying the names of the parties, the court from which issued, the date of its reception, how executed, and when and how returned. The record shall be kept as a public record, and turned over to his successor.

SOURCES: Codes, 1892, § 4127; 1906, § 4679; Hemingway's 1917, § 3096; 1930, § 3326; 1942, § 4251; Laws, 1994, ch. 521, § 35, eff from and after passage (approved March 25, 1994).

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-61. Execution docket kept by sheriff.

It shall be the duty of every sheriff to keep a record, to be called the "Execution docket," in which he shall note each execution received by him, specifying the names of all the parties, the amount and date of the judgment, the court from which issued and when returnable, the amount of the costs, the date when the same was received, and all levies and other proceedings had thereon. The record shall be kept by the sheriff as a public record, and at the expiration of the term of office of such sheriff, it shall be delivered to his successor.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 9 (1); 1857, ch. 6, art 127; 1871, § 233; 1880, § 339; 1892 § 4128; 1906, § 4680; Hemingway's 1917, § 3097; 1930, § 3327; 1942, § 4252; Laws, 1994, ch. 521, § 36, eff from and after passage (approved March 25, 1994).

Cross References — Execution docket kept by clerk of chancery court, see § 9-5-217.

Execution docket kept by clerk of circuit court, see § 9-7-181.

JUDICIAL DECISIONS

1. In general.

In proceedings to obtain judgment against sheriff for failure to file execution before return day thereof, presumption that circuit clerk delivered writ of execution to sheriff with reasonable promptness following issuance thereof was neutralized by presumption of law that if sheriff had received the writ before return day, he would have returned it within the time provided by law, in the absence of any testimony on the subject by the clerk or showing of sheriff's docket in which he is required to show when such writ is received. W.T. Rawleigh Co. v. Causey, 195 Miss. 842, 16 So. 2d 397 (1944).

RESEARCH REFERENCES

ALR. Liability of police or peace officers for false arrest, imprisonment, or malicious prosecution as affected by claim of suppression, failure to disclose, or failure to investigate exculpatory evidence. 81 A.L.R.4th 1031.

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-63. Jail docket kept by sheriff.

It shall be the duty of every sheriff to keep a record, to be called the "Jail docket," in which he shall note each warrant or mittimus by which any person shall be received into or placed in the jail of his county, entering the nature of the writ or warrant, by whom issued, the name of the prisoner, when received, the date of the arrest and commitment, for what crime or other cause the party is imprisoned, and on what authority, how long the prisoner was so imprisoned, how released or discharged, and the warrant therefor or the receipt of the officer of the penitentiary when sent there. All of said entries shall be full and complete, so as to give a perfect history of each case. The record shall be kept as a public record, and turned over to his successor.

SOURCES: Codes, 1892, § 4129; 1906, § 4681; Hemingway's 1917, § 3098; 1930, § 3328; 1942, § 4253; Laws, 1994, ch. 521, § 37, eff from and after passage (approved March 25, 1994).

Cross References — Duty of sheriff to preserve mittimus and discharge warrants and turn them over to successor, see § 19-25-55.

Further provisions as to jail docket, see § 47-1-21.

ATTORNEY GENERAL OPINIONS

A sheriff's public "Jail Docket" is for the purpose of maintaining a record of individuals housed on criminal charges. The identity of an individual housed because of a civil commitment due to mental or drug and alcohol proceedings is not required to be entered in the "Jail Docket," and the sheriff may maintain a separate "Mental Commitment" docket. Maples, March 2, 2007, A.G. Op. #07-00073, 2007 Miss. AG LEXIS 77.

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:17 (transfer of custody of goods, process, and prisoners by former sheriff to successor).

§ 19-25-65. Sheriff to serve as county librarian.

The sheriff shall be the custodian of the books other than record books belonging to the county, and he shall keep the Mississippi Department

Reports, census reports, statutes of the state, the "Mississippi Reports," digests, and legislative journals assigned to his county in a suitable and safe bookcase in the courtroom of the courthouse. He shall keep them well bound in leather, or stiff boards with leather back and corners, to be paid for out of the county treasury on the order of the board of supervisors, and he shall preserve them in good condition. He shall be fined Ten Dollars ($10.00) by the court, either circuit or chancery, as for a contempt, for each volume belonging to the county and which has passed into his custody that shall be out of the courtroom at any term of court. He shall also receive and preserve in the same way all books of every kind, maps, charts, and other like things that may be donated to the county by the state, the United States, from individuals or other sources. He shall not permit any of the books in his keeping to be carried out of the courthouse.

The sheriff shall, in case of binding or rebinding of books belonging to the county, cause the statutes of the state to be labeled "Laws of Mississippi," and the year of their enactment shall appear thereon. If the reports and digests or code are rebound, they shall be labeled as they were originally.

In his settlement with the clerk of the board of supervisors for the month of December of each calendar year, the sheriff shall file with the said clerk a sworn itemized statement of the volumes of the Mississippi Reports on hand in the county library on the last business day of said month, and for all volumes missing since the settlement for the previous December the clerk shall debit the said sheriff in his said settlement at the rate of Four Dollars ($4.00) for each of said missing volumes.

SOURCES: Codes, 1892, §§ 4133, 4134; 1906, §§ 4685, 4686; Hemingway's 1917, §§ 3102, 3103; 1930, §§ 3332, 3333; 1942, §§ 4257, 4258; Laws, 1968, ch. 361, § 66, eff from and after January 1, 1972.

Cross References — Copies of "Mississippi Reports" furnished by Secretary of State, see § 7-3-15.

Requirement that board of supervisors provide book cases for courtroom, see § 19-7-25.

Establishment of public county law libraries, see § 19-7-31.

Labeling acts of legislature, see § 31-1-19.

§ 19-25-67. Duty of sheriff to keep the peace.

It shall be the duty of every sheriff to keep the peace within his county, by causing all offenders in his view to enter into bonds, with sureties, for keeping the peace and for appearing at the next circuit court, and by committing such offenders in case of refusal. He shall certify and return said bonds to the court. It shall be his duty to quell riots, routs, affrays and unlawful assemblages, and to prevent lynchings and mob violence, and wherever necessary he shall call to his aid the power of the county. Any person who shall fail, neglect or refuse to respond to the call of the sheriff for such aid shall be reported by the sheriff to the circuit court, and it shall be his duty to prosecute all such persons, who, upon conviction, shall be punished as for a misdemeanor. He shall pursue, apprehend, and commit to jail all persons charged with treason, felony, or other crimes. He may take bonds, with good and sufficient sureties, of any person whom he may arrest with or without a warrant for any felony that is bailable as a matter of law. He may fix the amount of such bonds, only in emergency circumstances. "Emergency circumstances" means a situation in which a person is arrested without a warrant and cannot be taken before a judicial officer for a determination of probable cause within a reasonable time, or within forty-eight (48) hours, whichever is the lesser, after the arrest.

Any sheriff who wilfully fails, neglects or refuses to perform any of his duties as prescribed in this section shall be guilty of a misdemeanor and prosecuted therefor, and upon conviction thereof he shall be removed from office.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (13); 1857, ch. 6, art 129; 1871, § 235; 1880 § 340; 1892 § 4130; 1906, § 4682; Hemingway's 1917, § 3099; 1930, § 3329; 1942, § 4254; Laws, 1995, ch. 319, § 1, eff from and after July 1, 1995.

Cross References — Constitutional right of assembly, see Miss. Const. Art. 3, § 11.

Duty of constables to give information concerning unlawful assemblies, see § 19-19-5.

Authority of sheriff to employ power of county to execute process, see § 19-25-39.

Additional guards for jail when there is danger of escape or attack, see § 19-25-75.

Permits for rock festivals, see § 45-21-3.

Arrests generally, see §§ 99-3-1 et seq.

Form of bail, see § 99-5-1.

How bail bonds and recognizances are payable, see § 99-5-5.

Release of defendant from custody on bail, see § 99-5-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Taking appearance bond.
3. Discretion to accept or reject bonds.

1. In general.

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the event complained of occurred in such other state. McLean v. Mississippi ex rel. Roy, 96 F.2d 741, 119 A.L.R. 670 (5th Cir. 1938), cert. denied, 305 U.S. 623, 59 S. Ct. 84, 83 L. Ed. 399 (1938).

2. Taking appearance bond.

The language of Miss. Code Ann. § 19-25-67 gives sheriffs the discretionary authority to grant or deny the ability to write bail bonds as long as such action is not taken in an arbitrary and capricious fashion, but does not create a legitimate claim of entitlement in a bail bondsman to have his bonds accepted. Bonding v. Lee County, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 114124 (N.D. Miss. Dec. 8, 2009).

But if the capias be returnable instanter, it is not proper for the sheriff to take a bond; he should carry the prisoner to the court. Bourdeaux v. Warren County, 66 Miss. 231, 5 So. 227 (1888).

The sheriff's power to take bond from a party arrested by him by virtue of process of the circuit court does not terminate until after the party has been legally discharged from his custody; and he can do so after a mistrial. State v. Brown, 32 Miss. 275 (1856).

When a bench warrant is issued in term time, returnable on a future day of the term, the sheriff may take bond for the appearance of the prisoner on that day. Moss v. State, 7 Miss. (6 Howard) 298 (1842).

3. Discretion to accept or reject bonds.

While Miss. Code Ann. § 19-25-67 authorized a sheriff to take bonds, so long as they were accompanied by good and sufficient sureties, it did not require the sheriff to accept every bond offered with sufficient sureties, and the sheriff had limited discretion as to whether to accept or reject a bond tendered for the release of an accused; Miss. Code Ann. § 99-5-19 supported this finding, in that it twice mentioned the person taking and approving a bail bond. Tunica County v. Hampton Co. Nat'l Sur., LLC, 27 So. 3d 1128 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

It is the duty of the sheriff to keep the peace within the county (Section 19-25-67) and no authority exists to provide greater protection to certain areas of the county in return for the residents of those areas making payments to the county to cover the costs of additional protection. Frierson, December 7, 1995, A.G. Op. #95-0793.

Under Section 19-25-67, traffic laws may not apply to private roads however, the sheriff does have jurisdiction to enforce other laws such as drug violations on private property. A sheriff has jurisdiction over all crimes committed within his county. However, when patrolling private property, the sheriff must have legal authority to be present on the private property. Sollie, April 26, 1996, A.G. Op. #96-0247.

If a justice court judge refers an affiant to a sheriff based upon a finding that probable cause does not exist in the affidavit or other evidence taken under oath to believe that a crime was committed or that the defendant committed the crime, then the sheriff has a duty to undertake such an investigation as the sheriff deems sufficient to determine whether sufficient probable cause exists and to then present the matter again to the appropriate judicial officer. Broadhead, July 3, 1997, A.G. Op. #97-0389.

A sheriff's jurisdiction is restricted to the boundaries of the county from which he is elected and, therefore, a sheriff does not have the authority to enforce state laws in an adjoining county. Newman, December 18, 1998, A.G. Op. #98-0749.

County sheriff's department does not have the authority to enforce traffic violations on the private roads encompassed in a private development. Artigues, Oct. 17, 2003, A.G. Op. 03-0511.

In addition to this section, §§ 99-5-15 and 99-33-7, give a sheriff the authority to take or approve bonds. Tolar, Oct. 31, 2003, A.G. Op. 03-0571.

RESEARCH REFERENCES

Am Jur. 70 Am. Jur. 2d, Sheriffs, Police, and Constables § 24.

CJS. 80 C.J.S., Sheriffs and Constables §§ 71-76.

§ 19-25-69. Sheriff to have charge of courthouse, jail and protection of prisoners.

The sheriff shall have charge of the courthouse and jail of his county, of the premises belonging thereto, and of the prisoners in said jail. He shall preserve the said premises and prisoners from mob violence, from any injuries or attacks by mobs or otherwise, and from trespasses and intruders. He shall keep the courthouse, jail, and premises belonging thereto, in a clean and comfortable condition, and it shall be his duty to prosecute all persons who are guilty of injuring or defacing same. If, after a hearing by the Governor, held in accordance with due process of law, it shall be ascertained that the sheriff has wilfully failed, neglected or refused to preserve the courthouse, or the jail, or any prisoners lawfully in his custody from injuries by mob violence, then the Governor shall have the power and it shall be his duty to remove such sheriff from office.

However, in the case of a jail owned jointly by a county and municipality, under the provisions of Section 17-5-1, Mississippi Code of 1972, after the appointment of a jailer, pursuant to Section 47-1-49, Mississippi Code of 1972, responsible for all municipal prisoners lodged in said jail, neither the sheriff nor his bondsmen shall be responsible for actual maintenance or operation of said jail, insofar as municipal prisoners are concerned.

SOURCES: Codes, 1857, ch. 6, art 136; 1871, § 242; 1880, § 342; 1892, § 4132; 1906, § 4684; Hemingway's 1917, § 3101; 1930, § 3331; 1942, § 4256; Laws, 1966, ch. 369, § 1, eff from and after passage (approved May 6, 1966).

Cross References — Sheriff to provide courtroom security when justice court in session, see § 9-11-5.

Requirement that board of supervisors erect and maintain courthouse and jail, see § 19-3-41.

Requirement that board of supervisors properly furnish courthouse, see § 19-7-23.

Duty of sheriff to jail committed persons, see § 19-25-35.

Requirement that certain county officers keep offices at courthouse, see § 25-1-99.

Sheriff promulgating rules and regulations for joint state-county public service work programs, see § 47-5-405.

Picketing which interferes with entrance to jail, see § 97-7-63.

Penalty for destroying or defacing courthouse or jail, or furniture therein, see § 97-17-39.

JUDICIAL DECISIONS

1. In general.

A sheriff's duties with respect to operating a jail and keeping prisoners confined were discretionary in nature and, therefore, the sheriff was entitled to the protection of qualified immunity in a suit to recover for the wrongful death of a victim who was murdered by escaped inmates. McQueen v. Williams, 587 So. 2d 918 (Miss. 1991).

State statutory scheme permitting temporary detention of mentally ill person in jail followed by physical and psychological examination within 24 hours of issuance of writ to take custody, and placing duty on sheriff to keep safe prisoners entrusted to his care, adequately meet procedural due process requirements for purposes of summary judgment motion in federal civil rights action by executor of estate of mentally ill person who died while in jail awaiting examination. Boston v. Lafayette County, 743 F. Supp. 462 (N.D. Miss. 1990).

Without existence of special relationship between sheriff and victim of homicide by jail escapees or sheriff and victim's survivors, survivors have no cause of action against sheriff because sheriff's duty is general public duty. Robinson v. Estate of Williams, 721 F. Supp. 806 (S.D. Miss. 1989).

Sheriff has no authority to release from jail prisoner who has been placed in custody of sheriff by court order without procuring court order allowing release; sheriff who releases prisoner, without court order, on basis of alleged mental and physical problems requiring hospitalization of prisoner, may be held in contempt of court. Coleman v. State, 482 So. 2d 221 (Miss. 1986).

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the event complained of occurred in such other state. McLean v. Mississippi ex rel. Roy, 96 F.2d 741, 119 A.L.R. 670 (5th Cir. 1938), cert. denied, 305 U.S. 623, 59 S. Ct. 84, 83 L. Ed. 399 (1938).

ATTORNEY GENERAL OPINIONS

County board of supervisors can contract with private individuals or corporations to operate vending machines at courthouse for benefit of public; although sheriff is required to be custodian of courthouse, he may not be required to assume responsibility for maintenance of vending machine funds and/or equipment. Herring, June 21, 1990, A.G. Op. #90-0406.

Although sheriff may not fire county employees who are not members of the sheriff's department, sheriff may, under duty to care for and maintain courthouse, keep any persons, including such employees, from stealing courthouse property and exclude persons who are intoxicated on courthouse property from premises. Barrett, Sept. 18, 1992, A.G. Op. #92-0710.

Sheriff should have such access to courthouse and offices in it as is necessary to preserve and keep them secure and clean, but should remember that officials with office space in courthouse have certain statutory duties and liabilities with regard to official records and monies kept in their offices; sheriff should afford these officials necessary safeguards to protect integrity of these records. Ford, Oct. 21, 1992, A.G. Op. #92-0800.

Sheriff has custodial charge of courthouse and duty to keep it clean and comfortable; if he fails to do so, Governor has power and duty to remove such sheriff from office. Ford, Jan. 12, 1994, A.G. Op. #93-0959.

Because the sheriff is charged with keeping the courthouse clean and comfortable, he/she has the authority to hire a janitor or a cleaning service; the compensation for such janitor or cleaning service will come from the sheriff's budget. Tolar, Oct. 18, 2002, A.G. Op. #02-0601.

A board of supervisors would not have the authority to hire a private security company to provide security for the courthouse rather than using the sheriff's office; however, the board may authorize the sheriff to employ private security for the courthouse, and may amend his budget to provide therefor. Meadows, Feb. 14, 2003, A.G. Op. #03-0740.

The sheriff has exclusive control over jail employees, subject to the constraints of his budget as approved by the board of supervisors. Farmer, Feb. 6, 2004, A.G. Op. 04-0005.

RESEARCH REFERENCES

ALR. Prosecutions of inmates of state or local penal institutions for crime of riot. 39 A.L.R.4th 1170.

§ 19-25-71. Sheriff to serve as jailer; separate rooms by gender; training.

(1) The sheriff shall be the jailer of his county and, in the performance of his duties as jailer, he shall employ a jailer or jailers to have charge of the prisoners in the jail. However, in any county in which there is a jointly owned jail, the jailer, pursuant to Section 47-1-49, shall be the person appointed by the governing authorities of the municipality insofar as municipal prisoners are concerned. The sheriff shall keep in the jail thereof separate rooms by

gender, and shall not permit any communication between a male and a female prisoner, unless they be married.

(2) The board of supervisors of the county shall pay the tuition, living and travel expenses incurred by a person in attending and participating in the basic and continuing education courses for county jail officers.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 3 (15); 1857, ch. 6, art 131; 1871, § 237; 1880, § 343; 1892, § 4136; 1906, § 4687; Hemingway's 1917, § 3104; 1930, § 3334; 1942, § 4259; Laws, 1896, p 153; Laws, 1966, ch. 369, § 2; Laws, 1968, ch. 552, § 2; Laws, 1998, ch. 486, § 1; Laws, 1999, ch. 482, § 9, eff from and after July 1, 1999.

Cross References — Inspection of jail by grand jury, see § 13-5-55.
Punishment of sheriff for neglect of duty as to jail, see § 13-5-55.
Separating convicts of different sexes, see § 47-1-23.
Keeping municipal prisoners in county jail, see § 47-1-39.
Removal of prisoners to another county jail or the state penitentiary, see § 47-3-1.
Penalty for permitting prisoner to escape, see § 97-9-39.

JUDICIAL DECISIONS

1. In general.

A sheriff's duties with respect to operating a jail and keeping prisoners confined were discretionary in nature and, therefore, the sheriff was entitled to the protection of qualified immunity in a suit to recover for the wrongful death of a victim who was murdered by escaped inmates. McQueen v. Williams, 587 So. 2d 918 (Miss. 1991).

Jail diet which consisted mainly of starch and carbohydrates with few vegetables or fruits was not a deprivation so serious as to require an express injunctive provision. Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981), amended, 453 U.S. 911, 101 S. Ct. 3141, 69 L. Ed. 2d 993 (1981), cert. dismissed, 453 U.S. 950, 102 S. Ct. 27, 69 L. Ed. 2d 1033 (1981), overruled on other grounds, International Woodworkers of Am. v. Champion Int'l Corp., 790 F.2d 1174 (5th Cir. 1986), overruled, Pedraza v. Jones, 71 F.3d 194 (5th Cir. Tex. 1995).

A county jail does not violate the United States Constitution by allowing inmates to wear their own clothing as provided for by § 19-25-71 rather than issuing a special uniform for all prisoners, especially in view of the fact that the jail's excellent climate control system eliminates any need for special or excessive quantities of clothing. Green v. Ferrell, 500 F. Supp. 870 (S.D. Miss. 1980), rev'd on other grounds, 664 F.2d 1292 (5th Cir. 1982), reh'g denied, 670 F.2d 181 (5th Cir. 1982).

Suit against sheriff and surety for failure to provide required jail accommodations. United States Fid. & Guar. Co. v. State, 116 Miss. 1, 76 So. 744 (1917), error dismissed, 245 U.S. 679, 38 S. Ct. 189, 62 L. Ed. 543 (1917).

ATTORNEY GENERAL OPINIONS

Under Mississippi law, sheriff must exercise reasonable care for all prisoners in his care, including municipal prisoners housed in county jail. McGrew, Jan. 12, 1994, A.G. Op. #93-0966.

Prisoners' privileges of mail, telephone, visitation, access to law library and recreation are not addressed by state statute. Mullins, March 27, 1998, A.G. Op. #98-0159.

The responsibility for medical expenses incurred by a municipal prisoner lies with the prisoner; if the prisoner is determined indigent and unable to pay his medical expenses, then the municipality has the responsibility for those medical costs; absent an agreement to the contrary, the responsibility for the medical costs of a municipal prisoner housed in the county jail remains with the municipality. Davis, December 18, 1998, A.G. Op. #98-0741.

The sheriff is the jailer of his county and may hire additional jailers to run the operation of the jail. Mullins, March 26, 1999, A.G. Op. #99-0123.

A sheriff may provide a meal from the county jail at no cost to the members of the grand jury as part of their inspection of the county jail. Caranna, April 21, 2000, A.G. Op. #2000-0207.

A sheriff has exclusive authority and control over his employees and this authority includes hiring, firing, disciplinary rules and regulations as well as other general operations of his office. Tolar, Mar. 28, 2003, A.G. Op. #03-0046.

The sheriff has exclusive control over jail employees, subject to the constraints of his budget as approved by the board of supervisors. Farmer, Feb. 6, 2004, A.G. Op. 04-0005.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions § 52.

§ 19-25-73. Feeding of prisoners; alternative methods of funding.

(1) In respect to the feeding of prisoners by the sheriff's office, the board of supervisors is authorized to choose one (1) of the following methods:

(a) It shall only contract with a local caterer or restaurant owner to bring in food for the prisoners, and the contract shall be awarded after taking bids as provided by law for other county contracts.

(b) The sheriff shall purchase, in the name of the county, all necessary food and related supplies to be used for feeding prisoners only in the county jail. All purchases of such food and supplies shall be invoiced to the county and placed on the claims docket of the board of supervisors for disposition in the same manner as all other claims against the county. All wages and other compensation for services rendered to the sheriff in connection with the feeding of prisoners shall be submitted to and approved by the board of supervisors as other wages or compensation paid to employees of the sheriff. The total expenditure for such purpose under this method shall not exceed an amount equal to Six Dollars ($6.00) per day per prisoner, except as provided in subsection (3) of this section. All payments and reimbursements from any source for the keeping of prisoners shall be received and paid into the general fund of the county.

(c) The board of supervisors may negotiate a contract with the board of trustees of the local public community hospital to bring in food for the prisoners.

(2) The board of supervisors may authorize the sheriff to maintain a bank account entitled "jail food allowance account" into which shall be deposited all receipts for feeding and keeping prisoners in the county jail, including payments from the board of supervisors at the rate of Six Dollars ($6.00) per prisoner per day and all such receipts from municipalities, the United States

and any other jurisdictions required to pay the cost of feeding or keeping prisoners contained in the jail. He shall maintain a receipts journal and a disbursements journal, in a form to be prescribed by the State Department of Audit, which will provide the information necessary to determine the actual cost of feeding the prisoners, which shall not exceed Six Dollars ($6.00) per prisoner per day, except as provided in subsection (3) of this section. All costs and expenses for such feeding shall be paid from the jail food allowance account and supported by properly itemized invoices. Any funds accumulating in the jail food allowance account in excess of the monthly average expenditures, plus ten percent (10%) for contingencies, shall be paid into the county general fund at least once each calendar quarter.

(3) In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments provided under Section 47-5-112, Mississippi Code of 1972, for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections. Nothing in this section shall be construed to affect payments by the Department of Corrections set by Section 47-5-112, Mississippi Code of 1972, for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

SOURCES: Codes, 1942, § 4259.5; Laws, 1972, ch. 463, § 1; Laws, 1976, ch. 457, § 1; Laws, 1979, ch. 481; Laws, 1982, ch. 337; Laws, 1991, ch. 460, § 1, eff from and after July 1, 1991.

Editor's Note — Section 47-5-112 referred to in (3) was repealed by Laws, 1989, ch. 488, § 1, eff from and after July 1, 1991.

Cross References — Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 to 31-7-65.

ATTORNEY GENERAL OPINIONS

Miss Code Section 19-25-73(1) lists different methods which may be used to feed prisoners, including contract with local caterer; it is possible that private hospital is in position of caterer; since examination of whether hospital could reasonably be found to be caterer for purposes of Miss. Code Section 19-25-73(1) is for determiner of fact, which in this case is board of supervisors, subject to judicial review. Barry, Mar. 9, 1993, A.G. Op. #92-0032.

§ 19-25-74. Feeding of prisoners; log of meals served.

In any event, regardless of which method in respect to the feeding of prisoners is selected by the board of supervisors, the sheriff shall maintain a log, showing the name of each prisoner, the date and time of incarceration and release, to be posted daily, which shall record the number of meals served to prisoners at each mealtime, and the hours of the day served, and shall make affidavit as to the correctness thereof and file the same monthly with the board of supervisors. Such log shall remain on file with the board of supervisors as other records of said board and shall be made available to the state department of audit upon request. No claims for the cost or expenses of feeding prisoners shall be approved by the board of supervisors for any month unless and until such log for that month is filed.

SOURCES: Laws, 1976, ch. 457, § 2, eff from and after October 1, 1976.

§ 19-25-75. Additional guards for jail.

If the jail be insufficient or if there be danger of escape, lynching or rescue of any prisoner therein, or danger of an attack upon the jail by any person or persons, or if there be no jail, or if the sheriff or jailer shall have any person or persons lawfully in his custody and there be danger of the seizure, lynching, escape or rescue of any such person or persons, or if mob violence has been threatened against any such person or persons, it shall be the duty of the sheriff or jailer to summon a sufficient guard to protect and secure such prisoner, or to protect the jail, so long as the same may be necessary and no longer. The sheriff or jailer shall furnish to the circuit court of his county a certified list of all persons thus summoned, who served as such guard, together with the length of time each thus served, and he shall furnish to the court and also to the grand jury a list of all persons thus summoned who failed, neglected or refused to heed the summons of the sheriff or jailer. The circuit court upon due proof may allow to each person not more than Five Dollars ($5.00) for each day and night he may have been employed as guard, or at this rate for a greater time, to be paid out of the county treasury upon the order of the court and the issuance of a warrant therefor by the board of supervisors. This section shall not authorize the employment of permanent guards for the jail or for prisoners away from the jail, but only in an emergency. All persons summoned by the sheriff or jailer under the provisions of this section who shall fail, neglect or refuse to obey said summons shall, upon conviction, be punished as for a misdemeanor, and it shall be the duty of the circuit judge to charge the grand jury especially in this regard.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 6 (31); 1857, ch. 6, art 135; 1871, § 241; 1880, § 344; 1892, § 4138; 1906, § 4689; Hemingway's 1917, § 3106; 1930, § 3336; 1942, § 4261; Laws, 1966, ch. 369, § 4, eff from and after passage (approved May 6, 1966).

Cross References — Duty of sheriff to keep the peace, see § 19-25-67.

Additional guards for jails jointly owned by counties and municipalities, see § 47-1-55.

Removal of prisoners to another county jail or the state penitentiary, see § 47-3-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Without existence of special relationship between sheriff and victim of homicide by jail escapees or sheriff and victim's survivors, survivors have no cause of action against sheriff because sheriff's duty is general public duty. Robinson v. Estate of Williams, 721 F. Supp. 806 (S.D. Miss. 1989).

§ 19-25-77. Support of prisoner confined for contempt.

When a prisoner in custody for contempt of court shall be unable to support himself, the sheriff shall be allowed the same compensation for the support of such person as is allowed for keeping other prisoners, to be paid in the same way out of the county treasury. Such person shall not be detained in prison for such fees.

SOURCES: Codes, Hutchinson's 1848, ch. 28, art 5 (178); 1857, ch. 6, art 133; 1871, § 239; 1880, § 346; 1892, § 4140; 1906, § 4691; Hemingway's 1917, § 3108; 1930, § 3338; 1942, § 4263.

§ 19-25-79. Sheriff to receive and keep prisoner committed by justice.

The sheriff of any county shall receive and keep any prisoner committed by a justice of the peace according to the order of commitment.

SOURCES: Codes, Hutchinson's 1848, ch. 65, art 2 (75); 1871, § 1324; 1880, § 2219; 1892, § 4141; 1906, § 4692; Hemingway's 1917, § 3109; 1930, § 3339; 1942, § 4264.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Duty of sheriff to jail committed persons generally, see § 19-25-35.

JUDICIAL DECISIONS

1. In general.
2. Liability for tort of prisoner.

1. In general.

A sheriff complied with a justice court order and was not subject to liability for doing so where (1) the order stated that a third party was sentenced to six months' imprisonment, but that he was to be allowed "to go to work every day at 6:00 a.m. and return every evening," (2) the third party was involved in a motor vehicle accident on a Sunday evening, and (3) there was no evidence indicating that the third party did not work on Sundays or that the sheriff was negligent in his supervision and awareness of the third party's "comings and goings." Gant v. Maness, 786 So. 2d 401 (Miss. 2001).

2. Liability for tort of prisoner.

A sheriff was not liable for injuries sustained by the plaintiff in an automobile accident involving a prisoner in the county jail who was cited for driving under the influence and for driving without a license since the sheriff strictly adhered to the sentencing instructions given by the county justice court, which stated, "Sentence six months; let him go to work every day at 6:00 a.m. and return every evening." Gant v. Maness, — So. 2d —, 2001

Miss. LEXIS 48 (Miss. Mar. 1, 2001), opinion withdrawn by, substituted opinion at 786 So. 2d 401, 2001 Miss. LEXIS 145 (Miss. 2001).

ATTORNEY GENERAL OPINIONS

Youth court judge can place delinquent child in out of state institution pursuant to Interstate Compact on the Placement of Children, Section 43-18-1 et seq. of the Code; but nothing in the Compact specifically authorizes law enforcement officers to maintain custody of persons outside state. Agin, March 2, 1994, A.G. Op. #93-1011.

Once sheriff brings to attention of court that criminal fee is owed to county, this being done by making return on process, sheriff would not be liable under Subsection (3) of Section 25-7-19; sheriff must keep prisoner under terms set out in order of commitment issued by court and can not require that prisoner serve additional time or work additional days in order to pay off court cost and jail fees not included in the court's order of commitment. Price, March 31, 1994, A.G. Op. #93-0795.

Under Section 19-25-79, there is no difference between Justice Court and County or Circuit Court in regards to transporting prisoners to and from the county jail. Therefore, a sheriff must execute all lawful orders of a justice court judge. Chapman, June 7, 1996, A.G. Op. #96-0369.

A sheriff is obligated to transport delinquent or abused/neglected children to public or private facilities within the state in accordance with youth court orders. Hudson, May 26, 1999, A.G. Op. #99-0238.

§ 19-25-81. Sheriff to receive and keep prisoners from United States officers.

It shall be the duty of all sheriffs as jailors to receive and safely keep, until discharged by due course of law, all prisoners arrested or committed under legal process from the officers of the courts of the United States, if the officer or person delivering such prisoner shall secure to the sheriff as jailor the amount of subsistence, bedding, fuel, clothing, medicine and medical fees allowed by law in such cases. No sheriff as jailor shall receive or keep any such prisoner where the receiving or keeping of such prisoner would tax the capacity of the jail in his county to the extent that there would not be sufficient room in said jail to safely keep and care for state and county prisoners in his custody or where the receiving or keeping of said prisoner would render such jail unduly unsanitary or dangerous to the health of the prisoners confined therein.

SOURCES: Codes, Hutchinson's 1848, ch. 38, art 3; 1857, ch. 64, art 281; 1871, § 2781; 1880, § 3031; 1892, § 4142; 1906, § 4693; Hemingway's 1917, § 3110; 1930, § 3340; 1942, § 4265; Laws, 1888, p 84; Laws, 1928, ch. 234.

JUDICIAL DECISIONS

1. In general.

So long as the state under this statute [Code 1942, § 4265] permits a prisoner of the United States to remain in one of its jails, the prisoner has no right to complain, and the sentence under which he is detained is lawful. Rena v. United States, 58 F.2d 624 (5th Cir. 1932).

§ 19-25-83. Maintenance and use of canine corps.

The sheriff shall keep those hounds bought pursuant to Section 19-5-3, closely confined in the jail yard or in some suitable inclosure to be provided for them, and he shall not permit any person to handle or in any way to be familiar with them except himself and one other person to assist each sheriff, which person shall be designated by him and who shall assist the sheriff in taking care of said dogs and training them. The sheriff or his assistant shall at frequent intervals exercise said dogs by having someone for them to trail, to the end that their instinct may be kept active. The sheriff on receiving information of the commission of a felony in his county or the escape of prisoners in his custody, and that the person charged with the commission thereof is at large and has left the scene of the crime and is a fugitive from justice, shall convey the said dogs to the place where said felony was committed and endeavor to capture the fugitive or escaped prisoners, as the case may be.

SOURCES: Codes, 1906, § 330; Hemingway's 1917, § 3703; 1930, § 236; 1942, § 2914; Laws, 1896, ch. 139; Laws, 1962, ch. 244, eff from and after passage (approved May 1, 1962).

§ 19-25-85. Duties of sheriff of Harrison County in separate judicial district.

The sheriff of Harrison County shall be the proper officer to execute all process required by law to be executed by the sheriff and to return the same to such district of said county as the same may belong. He shall keep an office at Gulfport therein, and an office at Biloxi therein, and in each of said offices he shall keep all books, records, and documents required by law to be kept by sheriffs in every county in the state, the same as if said two districts were separate counties. In making sales of land under execution or otherwise in the discharge of any of his official duties, such lands as lie in the first district, he shall sell at the door of the courthouse in Gulfport and in making like sales of land lying in the second district he shall sell the same at the door of the courthouse at Biloxi. Sales of personalty made by the sheriff under like authority shall be made in such places in each district, as if each were a separate county.

SOURCES: Codes, 1942, § 2910-04; Laws, 1962, ch. 257, § 4, eff from and after passage (approved June 1, 1962).

§ 19-25-87. Authority of sheriff to receive funds from federal government and to expend such funds.

The sheriff of any county in which the federal government owns land is hereby authorized, with the approval of the board of supervisors, to receive funds from the corps of engineers of the United States Army for the purpose of defraying expenses incident to providing law enforcement on federally owned land. Such funds shall be kept in a separate account and may be expended by the sheriff, with the approval of the board of supervisors, for equipment, supplies, materials and deputies' salaries as necessary to effectuate the purposes of this section.

SOURCES: Laws, 1980, ch. 381, eff from and after passage (approved April 25, 1980).

CHAPTER 27

Surveyors and Surveys

Sec.
19-27-1. Oath and bond of office.
19-27-3. General duties.
19-27-5. Record of surveys.
19-27-7. Appointment of deputies.
19-27-9. Swearing the chain-bearers.
19-27-11. Surveyor may enter premises without consent in certain cases.
19-27-13. Resurveying, re-marking and bounding lands and county boundary lines.
19-27-15. Reestablishing original marks.
19-27-17. How survey ordered for execution of judicial sales.
19-27-19. Making of survey when surveyor interested.
19-27-21. Maps and plats; making thereof.
19-27-23. Maps and plats; form.
19-27-25. Maps and plats; contents.
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19-27-29. Maps and plats; penalty for selling lots before recording.
19-27-31. Maps and plats; alteration and vacation.
19-27-33. Establishing true meridian.
19-27-35. Surveyors to adjust instruments annually.

§ 19-27-1. Oath and bond of office.

There shall be elected for each county a surveyor who shall take and subscribe the oath of office prescribed by the Constitution and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officials, in a penalty not less than Fifty Thousand Dollars ($50,000.00).

From and after January 1, 1984, such surveyor shall be a registered land surveyor as provided for in Sections 73-13-71 through 73-13-99. However, this requirement shall not apply to any person who was holding the office of county surveyor by either election or appointment on December 31, 1983.

SOURCES: Codes, Hutchinson's 1848, ch. 31, art 1 (1); 1857, ch. 6, art 167; 1871, § 272; 1880, § 379; 1892, § 4389; 1906, § 4954; Hemingway's 1917, § 7737; 1930, § 7139; 1942, § 4268; Laws, 1980, ch. 515, § 10; Laws, 1986, ch. 458, § 21; Laws, 2009, ch. 467, § 6, eff from and after July 1, 2009.

Editor's Note — Laws, 1986, ch. 458, § 48, provided that § 19-27-1 would stand repealed from and after October 1, 1989. Subsequently, Laws, 1986, chapter 458, § 48, was amended by three 1989 chapters (341, 342, and 343), which deleted the date for repeal.

The United States Attorney General interposed no objection to the amendment by Chapter 458, § 21, Laws of 1986, on January 19, 1988.

Section 73-13-99, referred to in the last paragraph, was repealed by Laws, 2006, ch. 598, § 8, effective from and after July 1, 2006.

Cross References — Term of office, see Miss. Const. Art. 5, § 135.

Form of oath, see Miss. Const. Art. 14, § 268.

Election in state general election, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Who may administer oath, see § 25-1-9.

Filing oath of office, see § 25-1-11.

Approval of bond, see § 25-1-19.

ATTORNEY GENERAL OPINIONS

A county land surveyor is not required to conduct a complete title search of the land records of the land which adjoins the property he has been commissioned to survey. Case, Apr. 17, 2001, A.G. Op. #01-0172.

§ 19-27-3. General duties.

It shall be the duty of the surveyor faithfully to execute all orders of survey directed to him by any court, and to make all surveys of land within his county, at the request of the owners or proprietors thereof, and to do whatsoever in the surveying, resurveying, measuring, and dividing of land that may be required of him by any person.

SOURCES: Codes, Hutchinson's 1848, ch. 31, art 1 (2); 1857, ch. 6, art 168; 1871, § 273; 1880, § 380; 1892, § 4390; 1906, § 4955; Hemingway's 1917, § 7738; 1930, § 7140; 1942, § 4269.

Cross References — Ejectment actions, see § 11-19-55.

Partition of property, see § 11-21-19.

Fees of county surveyors, see §§ 25-7-37, 25-7-39.

Applicability of Land Surveyors Law, see § 73-13-97.

ATTORNEY GENERAL OPINIONS

A county land surveyor is not required to conduct a complete title search of the land records of the property he has been commissioned to survey and resurvey. Case, Apr. 17, 2001, A.G. Op. #01-0172.

RESEARCH REFERENCES

Am Jur. 2A Am. Jur. Legal Forms 2d, Architects, Engineers, and Surveyors §§ 24:74 et seq. (basic agreements; surveyors).

§ 19-27-5. Record of surveys.

Each county surveyor shall record, in a suitable book to be provided by the board of supervisors and to be kept in the office of the clerk of the chancery court, all surveys made by him and his deputies, except such as are made for a temporary purpose, and surveys of roads and of city, village, or town plats. He shall record the survey of any other surveyor which shall be made in his county by order of a court. The course and distance of all lines run and the number of acres contained in each piece of land surveyed shall be entered on the diagram of any section subdivided according to the survey thereof, and shall be considered a part of the record. The record shall show, in addition, the time when, by whom, and for whom such survey was made, a description of all the witness trees or monuments marked on the survey, with their respective bearings and distances, and the variation of the magnetic from the true meridian. He shall cause a true map or plat thereof to be made, of the form and size indicated in this chapter in regard to maps or plats of cities, towns or villages, or additions thereto, so far as may be applicable. The surveys made by him and the surveys made by any other surveyors as herein referred to shall be recorded in the same manner as provided herein for the record of maps or plats of cities, towns, or villages, or additions thereto. He shall keep the record accurately indexed, referring in a suitable manner to each survey or map or plat so recorded. The lines and distances of all surveys shall be in miles, or subdivisions thereof, yards, feet and inches.

SOURCES: Codes, 1892, § 4398; 1906, § 4963; Hemingway's 1917, § 7746; 1930, § 7148; 1942, § 4277.

Cross References — Making and recording maps and plats, see §§ 19-27-21 et seq.

JUDICIAL DECISIONS

1. In general.

In an action to recover damages and a statutory penalty on account of alleged wrongful cutting of timber on graveyard property, where the deed to property was lost and title was claimed by adverse possession, evidence from the surveyor's record book was admissible to show the description of the two acres to which the plaintiffs acquired title by adverse possession and also to show whether a deed was actually executed. C.L. Gray Lumber Co. v. Pickard, 220 Miss. 419, 71 So. 2d 211, 41 A.L.R.2d 920 (1954).

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Proof of Facts, Boundaries, Proof No. 2 (location of boundaries generally).

§ 19-27-7. Appointment of deputies.

The county surveyor may appoint deputies by writing, who shall take the oath of office and give bond as required of the surveyor, and who shall thereupon be authorized to perform all the duties of the surveyor.

SOURCES: Codes, 1857, ch. 6, art 171; 1871, § 277; 1880, § 384; 1892, § 4395; 1906, § 4960; Hemingway's 1917, § 7743; 1930, § 7145; 1942, § 4274.

Cross References — Oath and bond of surveyor, see § 19-27-1.
Deputy's authority to discharge duties of deceased officer, see § 25-1-39.

§ 19-27-9. Swearing the chain-bearers.

The surveyor shall administer an oath or affirmation to the chain-carriers to faithfully and diligently perform their duties without fear, favor, affection or partiality. The surveyor shall write the name of each of the chain-carriers on his plat, or on the certificate of survey, and he is authorized to administer all oaths which may be necessary in the prosecution or completion of any survey.

SOURCES: Codes, Hutchinson's 1848, ch. 31, art 1 (7); 1857, ch. 6, art 170; 1871, § 276; 1880, § 383; 1892, § 4394; 1906, § 4959; Hemingway's 1917, § 7742; 1930, § 7144; 1942, § 4273.

JUDICIAL DECISIONS

1. In general.

In an action involving a boundary dispute, where the qualifications of the surveyor and the quality of his instruments were well established, surveyor's testimony and survey were admissible notwithstanding his noncompliance with this section [Code 1942, § 4273]. Mabry v. Winding, 229 Miss. 88, 90 So. 2d 175 (1956).

§ 19-27-11. Surveyor may enter premises without consent in certain cases.

In the execution of an order of survey directed to him by any court, the surveyor and his assistants may, without the consent of the occupant or claimant of ownership, enter upon any lands ordered to be surveyed and to survey the same in an orderly and proper manner. Any person who shall obstruct him or his assistants therein shall be punished as for a contempt of court.

SOURCES: Codes, 1892, § 4391; 1906, § 4956; Hemingway's 1917, § 7739; 1930, § 7141; 1942, § 4270.

Cross References — Penalty for contempt of court, see § 9-1-17.

§ 19-27-13. Resurveying, re-marking and bounding lands and county boundary lines.

The surveyor, whenever called on for that purpose by those interested, shall resurvey and re-mark and bound any tract of land in his county where the old marks are defaced or are likely to decay and perish, being governed by the original surveys, patents, or title deeds of such tracts. He shall make a certificate of all such re-markings and boundaries, and deliver the same to the owner of the land, who may have it recorded in the office of the chancery clerk of the county or counties in which the land is situated. The surveyor, whenever requested by the board of supervisors of any county, shall resurvey, re-mark and bound any county boundary line, being governed by the original governmental surveys, field notes, and patents. The notes of such resurvey and the certificate thereof shall be recorded in the office of the chancery clerk of such county, and shall be presumptive evidence of the facts connected with and pertinent to the resurvey therein contained in any case in which the venue is in question.

SOURCES: Codes, Hutchinson's 1848, ch. 31, art 1 (3); 1857, ch. 6, art 169; 1871, § 274; 1880, § 381; 1892, § 4392; 1906, § 4957; Hemingway's 1917, § 7740; 1930, § 7142; 1942, § 4271; Laws, 1956, ch. 205.

Cross References — County boundaries, see §§ 19-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

In a boundary dispute, where qualifications of surveyor who was appointed by the court, were well established as well as the quality of his instruments, his testimony was admissible to be given such weight by the chancellor as his judgment directed even though the survey was not made in strict conformity with the statute. Bell v. Percy, 214 Miss. 456, 59 So. 2d 76 (1952).

The survey made by the county surveyor must control in the absence of showing competency of a private surveyor. Pope v. Ivy, 117 Miss. 501, 78 So. 367 (1918), motion granted, 78 So. 581 (Miss. 1918).

Map made without a survey, and without determining the location of the land cannot be admitted to contradict the testimony of a surveyor. Pope v. Ivy, 117 Miss. 501, 78 So. 367 (1918), motion granted, 78 So. 581 (Miss. 1918).

Where several surveys were admitted in evidence it was error to base an instruction on that of one surveyor and to assume that a corner of said survey was correct. Pope v. Ivy, 117 Miss. 501, 78 So. 367 (1918), motion granted, 78 So. 581 (Miss. 1918).

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Proof of Facts, Boundaries, Proof No. 2 (location of boundaries generally).

§ 19-27-15. Reestablishing original marks.

It shall be the duty of the surveyor, in all resurveys and re-markings, to perpetuate the original corners he may work from by noting new bearing trees, and otherwise, as may be convenient and useful. They shall also perpetuate the principal corners made by themselves in the same way.

SOURCES: Codes, 1892, § 4393; 1906, § 4958; Hemingway's 1917, § 7741; 1930, § 7143; 1942, § 4272.

Cross References — Penalty for destroying boundary landmarks, see § 97-17-15.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Proof of Facts, Boundaries, Proof No. 2 (location of boundaries generally).

§ 19-27-17. How survey ordered for execution of judicial sales.

In all cases where a survey of land may be necessary to the proper designation of parcels, in order to comply with the requirements of Section 111 of the Constitution, it shall be caused to be made by the person whose duty it is to make the sale, and the proper cost thereof shall be allowed in the bill of cost.

SOURCES: Codes, 1880, § 385; 1892, § 4396; 1906, § 4961; Hemingway's 1917, § 7744; 1930, § 7146; 1942, § 4275.

Cross References — Fees, see §§ 25-7-37, 25-7-39.

§ 19-27-19. Making of survey when surveyor interested.

Whenever a survey may be required of any land in which the county surveyor may be interested, or whenever from any cause there shall be no surveyor deputy to be found, or able to act, the survey may be made by the surveyor of any other convenient county, and a court may in any case so order, or the survey may be made by such person of skill as the parties interested may agree upon.

SOURCES: Codes, 1892, § 4397; 1906, § 4962; Hemingway's 1917, § 7745; 1930, § 7147; 1942, § 4276.

§ 19-27-21. Maps and plats; making thereof.

Whenever any city, town, or village, or addition thereto, shall be laid out, the proprietor thereof shall cause a true map or plat thereof to be made by a civil engineer, surveyor, or other competent person.

SOURCES: Codes, 1892, § 4399; 1906, § 4964; Hemingway's 1917, § 7747; 1930, § 7149; 1942, § 4278.

Cross References — Maps of subdivisions, see §§ 17-1-23, 21-19-63.
Power of municipalities to have surveys and maps made, see § 21-37-51.

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Boundaries §§ 44:10 et seq. (maps and plats).

2 Am. Jur. Proof of Facts, Boundaries, Proof No. 2 (location of boundaries generally).

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 19-27-23. Maps and plats; form.

Such map or plat shall in every case be made on a scale not less than two hundred feet to an inch, on sheets of good muslin-backed paper, eighteen inches by twenty-four inches in size. There shall be written upon the paper upon which said map or plat shall be made a full and detailed description of the land embraced in the map or plat, showing the township and range in which such land is situated, and the sections and parts of sections platted. It shall show on its face in plain letters the name of the city, town, or village, or addition platted, the name of the proprietor, and all of them, and of the engineer, surveyor, or other person making the map or plat, with the date. The same shall be signed by the proprietor and surveyor, and shall be acknowledged as deeds are acknowledged. The sections and parts of sections platted shall also be designated by lines drawn upon said map or plat, with appropriate letters and figures, and it shall contain a plain designation of the cardinal points of the compass, and a correct scale.

SOURCES: Codes, 1892, § 4400; 1906, § 4965; Hemingway's 1917, § 7748; 1930, § 7150; 1942, § 4279.

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Boundaries §§ 44:10 et seq. (maps and plats).

§ 19-27-25. Maps and plats; contents.

Every such map or plat shall particularly set forth and describe such portion of the government survey as is intended to be platted, and when the premises cannot be accurately described by legal subdivisions, then the boundaries thereof must be defined by metes, bounds, and courses. Such map or plat shall also specify and describe all the public grounds, except streets and alleys, by their boundaries, courses, and extent, and all streets and alleys by their courses, length, widths, names, or numbers, by writing or figures upon that portion of the map or plat intended for those uses. All the lots intended for sale may be numbered either by progressive numbers, or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered. Where all the lots in any block are of the same dimensions, it shall be sufficient to mark the precise length and width upon one tier thereof, but all gores, triangles, or other lots, either squares or parallelograms, shall have the length of their sides plainly defined by figures.

SOURCES: Codes, 1892, § 4401; 1906, § 4966; Hemingway's 1917, § 7749; 1930, § 7151; 1942, § 4280.

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Boundaries §§ 44:10 et seq. (maps and plats).

§ 19-27-27. Maps and plats; recording.

Such map or plat shall be recorded in the office of the clerk of the chancery court of the county or counties where the land lies, and in the following manner. The proprietor shall cause to be made, by a competent person, on the same scale and on paper of the same size and quality as that on which the map or plat is required to be made, an exact duplicate of said map or plat, with the detailed description, and signed and acknowledged as the original is required to be. The said map or plat and the said duplicate shall be delivered to the clerk of the chancery court, who shall carefully examine the same, and, if he find that in any respect it fails to conform to the requirements of Sections 19-27-23, 19-27-25, he shall point out the deficiency to the person so presenting it, and return it to such person for correction. When such map or plat shall conform, or shall be made to conform, to the requirements of law, the clerk and the engineer, surveyor, or other person who made the same, shall carefully compare the duplicate with the map or plat, and, if correct, or when made correct, it shall be certified by the clerk and the engineer, surveyor, or other maker, stating therein that they have carefully compared the same with the map or plat (describing it), and that it is an exact duplicate thereof, and of the whole of such map or plat. The clerk shall then securely fasten the said duplicate in a book of the proper size for such paper, so that it shall not be folded, which book shall be securely bound and provided at the costs of the county, after the first map or plat is so presented. Such duplicate so fastened in said book shall be held and taken to be a record of the map or plat, with like effect as if the map or plat had been actually transcribed by the clerk in a book in his office. The clerk shall certify on the map or plat and note on the duplicate the time when it was recorded, and make a reference on the map to the book and page where recorded. The lines and distances of all such maps or plats shall be in yards, feet, and inches.

SOURCES: Codes, 1892, § 4402; 1906, § 4967; Hemingway's 1917, § 7750; 1930, § 7152; 1942, § 4281.

Cross References — Penalty for selling lots before maps and plats are recorded, see § 19-27-29.

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Boundaries §§ 44:10 et seq. (maps and plats).

§ 19-27-29. Maps and plats; penalty for selling lots before recording.

If any person shall sell any lot or lots within any such city, town, or village, or addition thereto, before the plat or map thereof shall be recorded, he shall be liable to an action, to be brought for the use of the county, for Two Hundred

Dollars ($200.00). The clerk of the chancery court shall institute the action upon the presentation to him for record of any deed to lots in any such city, town, or village, or addition thereto.

SOURCES: Codes, 1892, § 4403; 1906, § 4968; Hemingway's 1917, § 7751; 1930, § 7153; 1942, § 4282.

JUDICIAL DECISIONS

1. In general.

The section [Code 1942, § 4282] has no application to plats of towns previously incorporated nor to private surveys made prior to its passage. Wellborn v. Muller, 84 Miss. 726, 36 So. 544 (1904).

RESEARCH REFERENCES

ALR. Failure of vendor to comply with statute or ordinance requiring approval or recording of plat prior to conveyance of property as rendering sale void or voidable. 77 A.L.R.3d 1058.

§ 19-27-31. Maps and plats; alteration and vacation.

If the owner of any land which shall have been laid off, mapped, or platted as a city, town or village, or addition thereto, or subdivision thereof, or other platted area, whether inside or outside a municipality, shall be desirous of altering or vacating such map or plat, or any part thereof, he may, under oath, petition the chancery court for relief in the premises, setting forth the particular circumstances of the case and giving an accurate description of the property, the map or plat of which is to be vacated, or altered, and the names of the persons to be adversely affected thereby, or directly interested therein. The parties so named shall be made defendants thereto, and publication of summons shall be made one time in a newspaper published, or having a general circulation, in the county where the land is situated, and which publication shall clearly state the objects and purposes of the petition.

At any time after the expiration of five days from said publication and the service of process upon the named defendants, the cause or proceeding shall be triable, and the court in term time or the chancellor in vacation may hear the petition and all objections from any person thereto, and may decree according to the merits of the case. However, where all adversely affected or directly interested persons join in said petition, the same may be finally heard and determined by the court or chancellor at any time. If the decree vacate, in whole or in part, or alter the map or plat, it shall be recorded as a deed, and a memorandum thereof noted on the record of the map or plat.

SOURCES: Codes, 1892, § 4404; 1906, § 4969; Hemingway's 1917, § 7752; 1930, § 7154; 1942, § 4283; Laws, 1946 ch. 169.

JUDICIAL DECISIONS

1. In general.
2. Amendment improper.

1. In general.

Because Miss. Code Ann. § 19-27-31 requires a publication to clearly state the objects and purposes of a petition to alter and vacate maps or plats, or any part thereof, a chancery court only has jurisdiction to amend a plat to the extent designated in the stated purpose. Anything outside or excluded from the stated purpose would not come under the facts and circumstances within § 19-27-31; accordingly, the chancery court would not have the jurisdiction, as otherwise granted by § 19-27-31, to approve the changes. Niedfeldt v. Grand Oaks Cmtys., LLC, 987 So. 2d 1043 (Miss. Ct. App. 2008).

For the appellate court to determine that the plat had been altered through abandonment of the road and easements, when there had been no chancery court determination after proper notice under Miss. Code Ann. § 19-27-31, would be to permit the developer to sidestep the procedure for plat alteration that had been prescribed by the Legislature, which the appellate court could not do; therefore, the developer remained enjoined from proceeding with the development of the condominium development until such time as it had secured leave to do so after proper plat alteration proceedings pursuant to Miss. Code Ann. § 19-27-31 or Miss. Code Ann. § 17-1-23(4). COR Devs., LLC v. College Hill Heights Homeowners, LLC, 973 So. 2d 273 (Miss. Ct. App. 2008).

When default decree has been entered in plat vacation proceeding without compliance with procedural requirements of plat vacation statute (§ 19-27-31), in that summons has not been published in general circulation newspaper and interested parties have not received legally adequate or timely notice of proceedings, it is error to dismiss petition to set aside decree on basis of lack of due diligence in responding to plat vacation proceeding. Barrett v. Ballard, 483 So. 2d 304 (Miss. 1985).

In a proceeding brought against a city to vacate a part of certain streets appearing in a municipal plat the chancery court properly overruled a general demurrer, denied certain affirmative defenses interposed by the city, and granted an interlocutory appeal from that decree, since a municipality does not have exclusive jurisdiction to close and vacate streets and alleys, particularly in situations where they have never been opened, and since the chancery court has authority under Code § 19-27-31 to alter and vacate maps or plats, or any part thereof, under facts and circumstances coming within the statute, resulting in vacation fo the street or property affected. City of Wiggins v. Breazeale, 422 So. 2d 270 (Miss. 1982).

Where plaintiff in a suit brought chiefly to vacate a recorded map, fails to comply with this section [Code 1942, § 4283], and defendant failed to appear, and the court granted only a part of the relief prayed, the decree is invalid and not res judicata of the matter decided. Reinecke v. Reinecke, 105 Miss. 798, 63 So. 215 (1913).

2. Amendment improper.

Plat was never properly amended to include a connector road because (1) given the statement of purpose listed in the publication and petition to amend the plat, there was no indication that an original developer intended to add a connector road that would have eventually led to another development; (2) a homeowner in the development would have had no reason to make an in-court appearance to challenge the inclusion of a road that was not included in the listed publication; and (3) a chancery court did not have the subject matter jurisdiction to approve changes not listed in the publication. Niedfeldt v. Grand Oaks Cmtys., LLC, 987 So. 2d 1043 (Miss. Ct. App. 2008).

ATTORNEY GENERAL OPINIONS

State statute, which sets out procedure to be followed in order to change subdivision plat, does not dictate when or under what circumstances plat must be changed. Lacoste, May 9, 1991, A.G. Op. #91-0319.

Miss. Code Section 19-27-3 sets out procedure to be followed in order to change subdivision plat; it does not dictate when or under what circumstances plat must be changed, so that one can convey portion of lot without giving conveyed portion separate lot number and without having conveyance marked off on subdivision plat; however, if external boundary of subdivision is to be changed, or if portion which is to be resubdivided is to be given separate lot number and be designated on plat, then official subdivision plat would necessarily have to be amended pursuant to Miss. Code 19-27-31. Gamble, May 12, 1993, A.G. Op. #93-0275.

Under Section 19-27-31 jurisdiction over changes in subdivision plats is proper in the chancery court and not the board of supervisors. Thach, April 26, 1996, A.G. Op. #96-0205.

If a property owner has obtained the written agreement of all affected parties, he may petition the board of supervisors for a change in the subdivision plat in which his property is located in accord with Section 17-1-23; otherwise, he should petition the chancery court pursuant to Section 19-27-31. Sherard, Feb. 9, 2001, A.G. Op. #2001-0041.

There is no requirement that an amended plat be filed every time a portion of a lot is conveyed by deed to another; in other words, one can convey a portion of a lot without giving the conveyed portion a separate lot number and without having the conveyance marked off on the subdivision plat. Mitchell, May 17, 2002, A.G. Op. #02-0254.

Determination of those persons that must be named in the petition to alter or vacate a map or plat presented to the board of supervisors and who must agree in writing to the alteration is a question of fact that must be made by the board of supervisors. Furthermore, any scrivener's error which would require the alteration of a lot line, must follow the procedures set forth in § 17-1-23 or in the alternative, this section. Nowak, June 4, 2004, A.G. Op. 04-0208.

RESEARCH REFERENCES

ALR. Validity and construction or regulations as to subdivision maps or plats. 11 A.L.R.2d 524.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 19-27-33. Establishing true meridian.

The board of supervisors may employ some skilled person to establish at or near the courthouse a line not exceeding twenty chains in length, corresponding with the true meridian of the place, and simultaneously determine to within one-half of one second of an arc the geographical longitude of the station occupied by the instrument used in the operation. After the line has been established, the board of supervisors may appoint a competent person to make annual observations at such time as may be determined, to ascertain the declination of the magnetic meridian from the true meridian, and when any alteration is ascertained, the person making the observation shall report the particulars to the board of supervisors, and the same shall be entered on its minutes.

SOURCES: Codes, 1892, § 4405; 1906, § 4970; Hemingway's 1917, § 7753; 1930, § 7155; 1942, § 4284.

§ 19-27-35. Surveyors to adjust instruments annually.

The county surveyor shall annually adjust any instrument used by him in making surveys after checking said instrument with the line of the true meridian established under Section 19-27-33, or with the line of the true meridian established within said county by the United States Coast and Geodetic Survey, or a division designated by the survey, or with the line of the true meridian established by the Mississippi State Highway Department in the district in which the property to be surveyed is located. A surveyor shall not be allowed to certify or testify to the correctness of a survey thereafter made unless the instrument used in making it had been corrected and adjusted within twelve months next before the survey.

SOURCES: Codes, 1892, § 4406; 1906, § 4971; Hemingway's 1917, § 7754; 1930, § 7156; 1942, § 4285; Laws, 1960, ch. 399, § 1, effective from and after passage (approved May 10, 1960).

Editor's Note — Section 65-1-1 provides that whenever the term "Mississippi State Highway Department" appears in the laws of this State it shall mean the "Mississippi Department of Transportation."

JUDICIAL DECISIONS

1. In general.

In a boundary dispute, where qualifications of surveyor who was appointed by the court, were well established as well as the quality of his instruments, his testimony was admissible to be given such weight by the chancellor as his judgment directed even though the survey was not made in strict conformity with the statute. Bell v. Percy, 214 Miss. 456, 59 So. 2d 76 (1952).

In a suit to determine a boundary, the testimony and survey of a registered civil engineer were admissible, where his qualifications were established, he began his survey at a section corner, and the quality of the instruments used was established. Moses v. Weaver, 210 Miss. 228, 49 So. 2d 235 (1950).

CHAPTER 29

Local and Regional Railroad Authorities

Sec.

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§ 19-29-1. Short title.

This chapter shall be known and may be cited as the "Railroad Authorities Law."

SOURCES: Laws, 1980, ch. 544, § 1, eff from and after July 1, 1980.

Cross References — Rehabilitation of railroads, see §§ 57-43-1 et seq.

Incorporation and consolidation of railroad corporations, see §§ 77-9-101 et seq.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-3. Legislative findings and declaration of purpose.

It is hereby declared by the Legislature of the State of Mississippi that railroad transportation and commerce is essential to the economic well-being of the state and the development of its natural resources and its agriculture and industry, and the preservation, development and maintenance of the state's rail service is in the public interest and serves a public purpose. It is the intent of the Legislature by this chapter to provide the manner and means necessary to carry out such purposes. The exercise of the powers granted in this chapter to the authorities and other public bodies is hereby declared to be a public and governmental function for a public purpose and public necessity.

SOURCES: Laws, 1980, ch. 544, § 2, eff from and after July 1, 1980.

§ 19-29-5. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms shall have the meanings respectively ascribed to them in this section:

(a) "Act" means the railroad authorities law.

(b) "Authority" or "railroad authority" means any of the public bodies corporate and politic created pursuant to this chapter or any law amendatory or supplemental thereto.

(c) "Bonds" means any bonds, notes, interim certificates, debentures or similar obligations issued by an authority pursuant to this chapter.

(d) "Federal government" means the United States of America or any department, division, commission or agency and instrumentality thereof, including the department of transportation and the interstate commerce commission.

(e) "Governing body" means the board of commissioners of the authority.

(f) "Person" means individuals, corporations, partnerships or foreign domestic associations.

(g) "Railroad" means a common carrier by railroad as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C.S., Section 1(3)).

(h) "Railroad properties and facilities" means any real or personal property or interest in such property which is owned, leased or otherwise controlled by a railroad or other person, including an authority, and which are used or are useful in rail transportation service, including:

(i) Track, roadbed and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, tressels, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, engine houses and public improvements used or usable for rail service operation;

(ii) Communication and power transmission systems for use by railroads;

(iii) Signals, including signals and interlockers;

(iv) Terminal or yard facilities and services to express company and railroads and their shippers, including ferries, tugs, car floats and related shoreside facilities designed for the transportation of equipment by water;

(v) Shop or repair facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, terminating, improving and expediting the movement of equipment or goods.

(i) "Rail service" means both freight and passenger railroad service.

SOURCES: Laws, 1980, ch. 544, § 3, eff from and after July 1, 1980.

§ 19-29-7. Creation of county railroad authority; commissioners; public hearing; authorization for county or municipality to create or dissolve authority.

(1) Any county in which there is located existing railroad properties and facilities or in which railroad properties and facilities previously existed, but were abandoned after February 5, 1976, may, by resolution, create a public body corporate and politic, to be known as a county railroad authority, which shall be authorized to exercise its functions upon the appointment and qualifications of the first commissioners thereof. Upon the adoption of a resolution creating a county railroad authority, the board of supervisors of the county shall, pursuant to the resolution, appoint five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve the terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by the expiration of term shall be filled for the unexpired term in the same manner as the original appointments. A county shall not adopt a resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the county, or if there is no newspaper published therein, then in a newspaper having general circulation in the county.

(2) Any county and a municipality within a county may create a railroad authority under this section by resolution adopted by the respective governing authorities. The authority shall be governed by five (5) commissioners. The board of supervisors shall appoint two (2) persons as commissioners of the authority. The governing authorities of the municipality shall appoint two (2) persons as commissioners of the authority. One (1) commissioner shall be appointed by the municipality and the county on a rotating basis with the municipality making the first appointment. The terms of the commissioners shall be the same as those provided in subsection (1) with the term designation to be determined by the majority vote of the governing authorities of the municipality and of the county. The municipality and the county may dissolve the authority by a majority vote of both governing authorities.

SOURCES: Laws, 1980, ch. 544, § 4; Laws, 1999, ch. 376, § 1, eff from and after July 1, 1999.

Cross References — County board of supervisors generally, see §§ 19-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-9. Regional railroad authority; increase or decrease of participating counties; public hearing; commissioners; appointment of executive committee; associate members from outside authority's jurisdiction.

(1) Two (2) or more counties in which there are located railroad properties and facilities of a railroad, or in which such properties and facilities previously existed, but were abandoned after February 5, 1976, may, by resolution of each, create a public body, corporate and politic, to be known as a regional railroad authority which shall be authorized to exercise its functions upon the issuance by the Secretary of State of a certificate of incorporation. The board of supervisors of each county joining in such regional authority shall, pursuant to the resolution organizing such authority, appoint five (5) residents of the county as commissioners of the authority and, as soon thereafter as practicable, the governing authorities of any municipality in such county, through which such railroads run, shall appoint a commissioner of the authority.

If the regional authority consists of an even number of commissioners, an additional commissioner shall be appointed by the Governor from within the geographic boundaries of the regional authority.

(2) A regional railroad authority may be increased from time to time to serve one or more additional counties if each additional county and each of the counties then included in the regional authority and the commissioners of the regional authority, respectively, adopt a resolution consenting thereto. If a county railroad authority for any county seeking to be included in the regional authority is then in existence, the commissioners of the county authority shall consent to the inclusion of the county in the regional authority, and if the county authority has any bonds outstanding, unless fifty-one percent (51%) or more of the holders of the bonds consent, in writing, to the inclusion of the county in the regional authority, no such inclusion shall be effected. Upon the inclusion of any county in the regional authority, all rights, contracts, obligations and property, real and personal, of the county authority shall be in the name of and vest in the regional authority.

(3) A regional railroad authority may be decreased if each of the counties then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provision for the retention or disposition of its assets and liabilities; however, if the regional authority has any bonds outstanding, no decrease shall be effected unless seventy-five percent (75%) or more of the holders of the bonds consent thereto in writing.

(4) A county shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the county, or if there is no newspaper published therein, then in a newspaper having general circulation in the county.

(5) All commissioners of a regional railroad authority appointed by municipalities shall be appointed for terms of five (5) years each. Commissioners who are initially appointed by a board of supervisors shall be designated to serve terms of one (1), two (2), three (3), four (4) and five (5) years, respectively; thereafter, each such term shall be five (5) years. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointments.

(6) A regional railroad authority, in its discretion, by resolution duly adopted and entered upon its minutes, may appoint an executive committee from among its membership. The executive committee shall consist of such number and shall be appointed in such manner so as to fairly represent the counties and municipalities served by the regional authority. The members of the executive committee shall serve for such terms as designated by the regional authority and may be removed from the committee before expiration of their terms in accordance with such procedure as the regional authority may adopt. The executive committee, when so appointed, may be authorized by the regional authority to exercise such powers and perform such duties, with or without the prior approval of the regional authority, as the regional authority deems appropriate; however, the executive committee may not exercise any power or perform any duty that is inconsistent with or in excess of the powers and duties authorized to be performed under the provisions of this chapter by the commissioners of the regional authority.

(7) A regional railroad authority may accept counties, municipalities and other political subdivisions of the state outside the jurisdiction of the regional authority to become associate members.

SOURCES: Laws, 1980, ch. 544, § 5; Laws, 2007, ch. 406, § 1; Laws, 2011, ch. 484, § 1, eff from and after passage (approved Apr. 6, 2011.)

Amendment Notes — The 2011 amendment added (7).

Cross References — County board of supervisors generally, see §§ 19-3-1 et seq.

Submission of resolutions pursuant to this section to the Secretary of State, see § 19-29-11.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-11. Submission of resolutions of regional authority to Secretary of State; certificate of incorporation.

Upon the appointment and qualification of the commissioners first appointed to a regional railroad authority, they shall submit to the Secretary of State a certified copy of each resolution adopted pursuant to subsection (1) of Section 19-29-9 by the counties included in the regional authority. Upon receipt thereof, the Secretary of State shall issue a certificate of incorporation to the regional railroad authority.

When a regional railroad authority is increased or decreased pursuant to subsections (2) and (3) of Section 19-29-9, it shall forward to the Secretary of State a certified copy of each resolution adopted pursuant thereto and, upon receipt thereof, the Secretary of State shall issue an amended certificate of incorporation in accordance therewith.

SOURCES: Laws, 1980, ch. 544, § 6, eff from and after July 1, 1980.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

§ 19-29-13. Proof of authorization or existence of county or regional railroad authority.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of a county railroad authority, created pursuant to Section 19-29-7, the county authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers upon proof of the adoption by the county of the resolution creating the county railroad authority and of the appointment and qualification of the first commissioners thereof.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of a regional railroad authority, such regional railroad authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers upon proof of the issuance by the Secretary of State of a certificate of incorporation of such regional railroad authority.

SOURCES: Laws, 1980, ch. 544, § 7; Laws, 1991, ch. 573, § 106, eff from and after July 1, 1991.

§ 19-29-15. Commissioners; expenses; quorum; officers.

A commissioner of an authority shall receive no compensation for his services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice chairman from among the commissioners.

SOURCES: Laws, 1980, ch. 544, § 8, eff from and after July 1, 1980.

§ 19-29-17. General powers of railroad authority.

An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments, unless otherwise specified in the chapter) including, but not limited to, the power:

(a) To sue and be sued, to have a seal, and to have perpetual succession;

(b) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this chapter, to carry into effect the powers and purposes of this authority;

(c) To maintain a principal office, and if necessary, regional offices at locations within its boundaries;

(d) To employ an executive director, secretary, technical experts, superintendents and other such officers, agents, employees, permanent or temporary, as may be required by or beneficial to the authority, and to determine their qualifications, duties and compensation; and to retain or contract with consulting engineers, financial consultants, accountants, attorneys and such other consultants and independent contractors as are necessary in its judgement to carry out the provisions of this chapter and to also fix the compensation thereof;

(e) To engage in research and development with respect to railroads;

(f) To plan, establish, acquire, construct, enlarge, reconstruct, improve, operate, maintain, replace, repair, extend, improve, regulate and protect railroad properties and facilities within its boundaries. For such purposes, an authority may acquire such properties or any interest therein by purchase, gift, lease, devise, eminent domain proceedings or otherwise, provided it shall not have the power to condemn property owned or used by a railroad unless the federal government has authorized the abandonment of the railroad line;

(g) To make the use and services of the railroad properties and facilities available to others in the furtherance of the purposes of this chapter and upon such terms and conditions as the governing body of the authority shall deem proper. In so doing, the authority shall have the power to lease same to others upon such terms and conditions as the authority may determine unless specifically provided for herein;

(h) To receive and accept contributions, grants or other financial assistance from the federal government, the state or any political subdivision thereof, including the county and others, to be used in the furtherance of the purposes of this chapter;

(i) To purchase, rent, lease or otherwise acquire any and all kinds of property, both real and personal, whether or not subject to deeds of trust, mortgages, liens, charges or other encumbrances, for the authority, which, in the judgment of its governing bodies, is necessary or convenient to carry out the purposes of this chapter;

(j) To acquire property which is suitable for use by industries requiring access to any railroad track owned, operated or subsidized by the authority;

(k) To establish schedules of tolls, fees, rates, charges and rentals for the use of the railroad properties and facilities and to charge, alter and collect such tolls, fees, rates, charges and rentals in carrying out the provisions of the chapter; and

(*l*) To make contracts and execute instruments containing such covenants, terms and conditions as in the judgment of the governing body may be necessary, proper or advisable for the purpose of obtaining grants, loans or other financial assistance from any federal or state agency for or in the aid of the acquisition or improvement of the railroad properties and facilities herein provided; to make all other contracts and execute all other instruments including without limitation licenses, long and short term leases, mortgages and deeds of trust and other agreements relating to the railroad property and facilities within its boundaries, and the construction, operation, maintenance, repair and improvement thereof as in the judgment of the governing body may be necessary, proper or advisable for the furtherance of the purposes of this chapter and the full exercise of the powers herein granted; and to carry out and perform the covenants, terms and conditions of all such contracts or instruments.

In addition to the general and special powers conferred in this section or elsewhere in this chapter, the authority is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers.

SOURCES: Laws, 1980, ch. 544, § 9, eff from and after July 1, 1980.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-18. Ad valorem tax for acquisition and maintenance of railroad properties.

(1) The governing body of a county railroad authority or regional railroad authority, as the case may be, may file a petition with the board of supervisors of any county included in the railroad authority, specifying for each such county, the rate of the ad valorem tax, not to exceed two (2) mills, to be levied by such county on the taxable property therein, for acquisition and mainte-

nance of railroad properties and facilities, and to defray operating expenses of the railroad authority and any other expenses authorized to be incurred by the railroad authority. Prior to levying the tax specified by the railroad authority, the board of supervisors of each such county shall publish notice of its intention to levy same. The notice shall be published once each week for three (3) weeks in some newspaper having a general circulation in the county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to levy the tax. If, within the time of giving notice, twenty percent (20%) or one thousand five hundred (1,500) of the qualified electors of the county, whichever is less, shall file a written protest against the levy of the tax, then the tax shall not be levied unless authorized by three-fifths (3⁄5) of the qualified electors of such county, voting at an election to be called and held for that purpose. If the tax levy fails to be authorized at an election held in a county included in the regional authority, then such tax levy shall not be made in any of the counties included in such regional authority.

(2) The avails of the ad valorem tax levied under authority of this section shall be paid by the county board of supervisors to the governing body of the railroad authority to be used as herein authorized.

(3) For any fiscal year after the initial levy of the tax, the board of supervisors levying same shall levy such tax at a millage rate which will produce an amount of revenue which approximates, but does not exceed, the amount of revenue produced from the levy for the preceding fiscal year. The county board of supervisors shall not increase the millage rate for the purposes authorized herein unless notice thereof is published and an election held, if required, in the manner set forth in subsection (1) of this section.

(4) Each railroad authority shall be subject to examination by the State Auditor.

(5) The tax levy authorized in this section shall not be included in the ten percent (10%) limitation on increases under Sections 27-39-320 or 27-39-321.

(6) The tax levy authorized in this section shall not be reimbursable under the provisions of the Homestead Exemption Law.

(7) A railroad authority created under Section 19-29-7(2) must receive the approval of the governing authorities of the municipality and the county creating such authority before levying any tax under this section.

SOURCES: Laws, 1981, ch. 519, § 1; Laws, 1999, ch. 376, § 2, eff from and after July 1, 1999.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 19-29-19. Acquisition of property by eminent domain.

In the acquisition of property by eminent domain proceedings authorized by this chapter, an authority shall proceed in the manner provided by Chapter 27 of Title 11, Mississippi Code of 1972, and as elsewhere provided by law. For the purpose of making surveys and examinations relative to eminent domain proceedings, it shall be lawful for the authority to enter upon the land, doing no damage. Notwithstanding the provisions of any other statute or other law, an authority may take possession of any property to be acquired by eminent domain proceedings at any time after the commencement of such proceedings. The authority shall not be precluded from abandoning such proceedings at any time prior to final order and decree of the court having jurisdiction of such proceedings. The authority shall be liable to the owner of the property for any damage done to the property during possession thereof by the authority.

SOURCES: Laws, 1980, ch. 544, § 10, eff from and after July 1, 1980.

RESEARCH REFERENCES

ALR. Spur track and the like as constituting use for which railroad can validly exercise right of eminent domain. 35 A.L.R.2d 1326.

§ 19-29-21. Disposal of railroad property or facilities.

Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 19-29-17 an authority may, by sale, lease or otherwise, dispose of any of its railroad property and facilities, or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease or otherwise shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or county or an agency of the state or federal government for use and operation as a public railroad, the sale, lease or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of the railroad system in this state.

SOURCES: Laws, 1980, ch. 544, § 11, eff from and after July 1, 1980.

Cross References — Sale of public lands, see §§ 29-1-1 et seq.

§ 19-29-23. Contracts or leases in connection with operation of railroad properties and facilities.

(1) In connection with the operation of railroad properties and facilities owned or controlled by an authority, the authority may enter into contracts, leases and other arrangements with any persons:

(a) Granting the privilege of using or improving the railroad properties and facilities or any portion or facility thereof or space therein for railroad purposes;

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at railroad properties and facilities; and

(c) Making available services to be furnished by the authority or its agents at the railroad properties and facilities.

In each case the authority may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and which shall be established with due regard to the property and improvements used and the expenses of operation to the authority.

(2) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 19-29-9, an authority may, by contract, lease or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term to be agreed upon, the privilege of operating, as agent of the authority or otherwise, any railroad owned or controlled by the authority.

SOURCES: Laws, 1980, ch. 544, § 12, eff from and after July 1, 1980.

Cross References — Railroad rehabilitation, see §§ 57-43-1 et seq.

§ 19-29-25. Rules and regulations.

An authority is authorized to adopt, amend and repeal such reasonable resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of any railroad properties and facilities owned by it or under its control. No rule, regulation, order or standard prescribed by the commission shall be inconsistent with, or contrary to, this chapter, or any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

SOURCES: Laws, 1980, ch. 544, § 13, eff from and after July 1, 1980.

§ 19-29-27. Designation of agent for receipt and disbursement of funds.

An authority is authorized to designate the Governor's office of planning and coordination as its agent to accept, receive, receipt for and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter. All moneys received by the said agent pursuant to this section shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purpose.

SOURCES: Laws, 1980, ch. 544, § 14, eff from and after July 1, 1980.

§ 19-29-29. Issuance of bonds by authority; security; limitation of liability thereon; tax exemption.

An authority shall have power to issue bonds from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable out of income or revenues from certain designated railroad properties and facilities and/or out of any general revenues of the authority, including income or revenues received from the federal government or from other sources. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any railroad properties and facilities of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

SOURCES: Laws, 1980, ch. 544, § 15, eff from and after July 1, 1980.

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Issuance and sale of bonds generally, see §§ 31-19-1 et seq.

Tax for regulation of railroads, see § 77-9-493.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-31. Resolution authorizing issuance of bonds; terms and covenants.

The issuance of bonds by an authority shall be authorized by a resolution of the governing body of such authority. Every such resolution shall be adopted by the affirmative vote of at least three-fifths (3/5) of all the members of such governing body.

A resolution in compliance with this section shall include any covenants with the bondholders deemed necessary by the commissioners to make such bonds secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of the revenues of the authority, including tolls, fees, rents, charges or any other revenues derived from the operation of the railroad and related uses of the property, the creation and maintenance of reserves; the investment of funds; the issuance of additional bonds; the maintenance of minimum fees, charges and rentals; the operation and maintenance of its railroad properties and facilities, insurance and insurance proceeds; accounts and audits; the sale of railroad properties and facilities; remedies of bondholders; the vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; the amendment of such resolution; and the appointment of a receiver in the event of a default.

Upon final enactment, each such resolution shall be published in full.

SOURCES: Laws, 1980, ch. 544, § 16, eff from and after July 1, 1980.

§ 19-29-33. Form and details of bonds.

Bonds authorized by resolution of the authority may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (1/10 of 1%). The denomination, form and place or places of payment of such bonds shall be fixed in the resolution or ordinance of the governing authorities issuing such bonds. Such bonds shall be executed by the manual or facsimile signature of the chairman and secretary of such authority, with the seal of the authority affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the resolution. The coupons may bear only the facsimile signatures of such chairman and secretary. No bonds shall be issued and sold under the provisions of this chapter for less than par and accrued interest.

The bonds may be sold at not less than par at public sale held after notice published once at least five (5) days prior to such sale in a newspaper having a general circulation in the area of operation and in a financial newspaper published in the City of Jackson, Mississippi, or in the City of New York, New York. Such bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

The determination of the authority, in the resolution authorizing the bonds, as to the classification of the railroad properties and facilities for which such bonds are authorized and as to the maximum period of usefulness shall be conclusive in any action or proceeding involving the validity of such bonds.

SOURCES: Laws, 1980, ch. 544, § 17; Laws, 1985, ch. 477, § 2, eff from and after passage (approved April 8, 1985).

Cross References — Details of county bonds, see § 19-9-7.

§ 19-29-35. Trust agreement securing bonds.

In the discretion of the authority, the bonds may be further secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank incorporated under the laws of the United States or the laws of any state in the United States. Any such trust agreement may pledge or assign income, fees or any other revenues and receipts to be received from a lessee or other user of railroad properties and facilities, whether or not they are related thereto. The bonds may be additionally secured by a mortgage, deed of trust or other security interest upon the railroad properties and facilities vesting in the trustee power to sell such project for the payment of indebtedness, power to operate a project and all other powers and authority for the further security of the bonds. The trust agreement may evidence a pledge of all or any part of the revenues to be derived from the project for the payment of the principal of, premium, if any, and interest on the bonds as the same shall become due and payable and may provide for the creation and maintenance of reserves. Any such trust agreement or any resolution providing for the issuance of bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof as may be reasonable and proper and not in violation of the law, including the duties of the authority and the lessee or other user in relation to the railroad properties and facilities and any construction, improvement, maintenance, repair, operation and insurance of same for which such bonds have been issued, and the custody, safekeeping, guarding and application of all moneys. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the authority may deem reasonable and proper for the security of the bondholders and may also contain provisions governing the issuance of bonds to replace lost, stolen or mutilated bonds. All expenses incurred by the authority in carrying out the provisions of such trust agreement may be treated as a part of the costs of the operation of the railroad properties and facilities with respect to which the bonds have been issued. Any trust agreement made in accordance with the provisions of this chapter may contain a provision that, in the event of a default in the payment of the principal of, redemption premium, if any, or the interest on the bonds issued in accordance with or relating to such agreement, or in the performance of any agreement contained in the proceedings, trust agreement or instruments relating to such bonds, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rates, rents or contract payments and to apply the revenues from the project in accordance with such proceedings, trust agreement or instrument. Any mortgage or deed of trust to secure bonds issued in accordance with the provisions of this chapter may also provide that in the event of a default in the payment thereof or in the violation of any agreement contained in the mortgage or deed of trust, the property secured by the mortgage or deed of trust may be foreclosed and sold under proceedings in equity or in any other manner now or hereinafter permitted by law. Such mortgage or deed of trust may also provide that any trustee under such mortgage or deed of trust, or the holder of any of the bonds secured thereby, may become the purchaser at any foreclosure sale if it is the highest bidder therefor.

The powers herein granted may be exercised whether or not a trust agreement is entered into and, if no trust agreement is entered into, such provisions as are above authorized may be set out in the resolution authorizing the bonds.

SOURCES: Laws, 1980, ch. 544, § 18, eff from and after July 1, 1980.

§ 19-29-37. Bonds to be legal investments and negotiable instruments.

The bonds issued under the provisions of this chapter shall be legal investments for the state, municipal corporations, political subdivisions, public bodies, commercial banks, savings and loan associations and insurance companies organized under the laws of this state.

All bonds and appurtenant coupons issued pursuant to this chapter shall be negotiable instruments within the meaning of the Uniform Commercial Code of the State of Mississippi.

SOURCES: Laws, 1980, ch. 544, § 19, eff from and after July 1, 1980.

Cross References — Negotiable instruments generally, see §§ 75-3-101 et seq.
Investments by insurance companies, see § 83-19-51.

§ 19-29-39. Property and income of authority exempt from taxation.

Any property in this state acquired by an authority for railroad purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation or control thereof shall be exempt from taxation to the same extent as other property belonging to political subdivisions of this state.

SOURCES: Laws, 1980, ch. 544, § 20, eff from and after July 1, 1980.

Cross References — Property exempt from taxes generally, see §§ 27-31-1 et seq.
Tax for regulation of railroads, see § 77-9-493.

§ 19-29-41. Real property of authority exempt from levy and execution.

All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be for a charge or lien upon its real property; however, the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues.

SOURCES: Laws, 1980, ch. 544, § 21, eff from and after July 1, 1980.

§ 19-29-43. Aid and cooperation of political subdivisions.

For the purpose of aiding and cooperating in the planning, undertaking, acquisition, construction, reconstruction or operation of the railroad facilities pursuant to the provisions of this chapter, any county for which an authority has been created and any city, town or village located therein, may, upon such terms, with or without consideration, as it may determine:

(a) Lend or donate money out of the county or municipal general fund to the authority;

(b) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by the county for railroad purposes be transferred or paid directly to the railroad authority as such funds become available to the county;

(c) Cause water, sewer or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such railroad or railroad facilities;

(d) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to the authority;

(e) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways and walks from established streets or roads to such railroads or railroad facilities;

(f) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, reconstruction, acquisition or operation of railroads or railroad facilities; and

(g) Enter into agreements with the authority respecting action to be taken by the county, city, town or village pursuant to the provisions of this section.

SOURCES: Laws, 1980, ch. 544, § 22, eff from and after July 1, 1980.

Cross References — Railroad rehabilitation, see §§ 57-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 65 Am. Jur. 2d, Railroads §§ 29, 30.

§ 19-29-45. Annual report and recommendations of railroad authorities.

At least once a year an authority shall file with the clerk of the board of supervisors of the county, or each county if it is a regional authority, and the Governor's office of planning and coordination, a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

SOURCES: Laws, 1980, ch. 544, § 23, eff from and after July 1, 1980.

§ 19-29-47. Provisions inapplicable to certain counties with port commissions.

The provisions of this chapter shall not be applicable with respect to any county in which an existing port commission is authorized to purchase and operate or lease railroad facilities pursuant to Section 59-7-453, Mississippi Code of 1972.

SOURCES: Laws, 1980, ch. 544, § 24, eff from and after July 1, 1980.

§ 19-29-49. Powers to be supplemental.

The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

SOURCES: Laws, 1980, ch. 544, § 25, eff from and after July 1, 1980.

§ 19-29-51. Provisions to be controlling.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling.

SOURCES: Laws, 1980, ch. 544, § 26, eff from and after July 1, 1980.

CHAPTER 31

Public Improvement Districts

Sec.
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19-31-49. Chapter to be liberally construed.
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§ 19-31-1. Short title.

This chapter shall be known and may be cited as the “Public Improvement District Act.”

SOURCES: Laws, 2002, ch. 499, § 1, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-3. Legislative findings.

The Legislature finds that:

(a) There is a need for uniform, focused and fair procedures in state law to provide a reasonable alternative for the establishment, power, operation and duration of independent districts to manage and finance basic public improvement services; and that, based upon a proper and fair determination of applicable facts, an independent district can constitute a timely, efficient, effective, responsive and economic way to deliver these basic services, thereby providing a solution to the state's planning, management and financing needs for delivery of capital infrastructure in order to service projected growth without overburdening counties and municipalities and their taxpayers.

(b) It is the legislative intent and purpose to authorize a uniform procedure by general law to establish an independent special district as an alternative method to manage and finance basic services for public improvements through the levy and collection of special assessments. It is further the legislative intent and purpose to provide by general law for the uniform operation, exercise of power and procedure for termination of any such independent district. It is further the purpose and intent of the Legislature that a district created under this chapter not have or exercise any zoning or permitting power. It is further the purpose and intent of the Legislature that no debt or obligation of a district shall constitute a burden on any local government without its consent.

SOURCES: Laws, 2002, ch. 499, § 2, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-5. Definitions.

As used in this chapter the following terms shall have the meanings ascribed to them in this section unless the context clearly requires otherwise:

(a) "Assessable improvements" means any public improvements and community facilities that the district is empowered to provide in accordance with this chapter.

(b) "Assessment bonds" means special obligations of the district that are payable solely from proceeds of the special assessments levied for an assessable project.

(c) "Board" or "board of directors" means the governing board of the district or, if such board has been abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given to the board by this chapter have been given by law.

(d) "Bond" includes certificate, and the provisions that are applicable to bonds are equally applicable to certificates. The term "bond" includes any assessment bond, refunding bond, revenue bond and other such obligation in the nature of a bond as is provided for in this chapter.

(e) "Public improvement district" or "district" means a special district that is created pursuant to this chapter and limited to the performance of those specialized functions authorized by this chapter, the boundaries of which are contained wholly within a single county or two (2) or more contiguous counties; the governing head of which is a body created, organized and constituted and authorized to function specifically as prescribed in this chapter for the delivery of public improvement services; and the formation powers, governing body, operation, duration accountability, requirements for disclosure and termination of which are as required by general law.

(f) "Contribution agreement" means an agreement between a district and a public entity under which the public entity agrees to provide financial or credit support in the form of cash, pledge, guaranty or other enhancement, which agreement must be approved in accordance with Sections 17-13-1 through 17-13-17.

(g) "Cost," when used with reference to any project, includes, but is not limited to:

(i) The expenses of determining the feasibility or practicability of acquisition, construction or reconstruction.

(ii) The cost of surveys, estimates, plans and specifications.

(iii) The cost of improvements.

(iv) Engineering, fiscal and legal expenses and charges.

(v) The cost of all labor, materials, machinery and equipment.

(vi) The cost of all lands, rights, servitudes and franchises acquired.

(vii) Financing charges.

(viii) The creation of initial reserve and debt service funds.

(ix) Working capital.

(x) Interest charges incurred or estimated to be incurred on money borrowed before and during construction and acquisition and for such reasonable period of time after completion of construction or acquisition as the board may determine.

(xi) The cost of issuance of bonds pursuant to this chapter, including advertisements and printing.

(xii) The cost of any election held pursuant to this chapter and all other expenses of issuance of bonds.

(xiii) The discount, if any, on the sale or exchange of bonds.

(xiv) Administrative expenses.

(xv) Such other expenses as may be necessary or incidental to the acquisition, construction or reconstruction of any project or to the financing thereof, or to the development of any lands within the district.

(h) "District manager" means the manager of the district.

(i) "District roads" means highways, streets, roads, alleys, sidewalks, landscaping, storm drains, bridges and thoroughfares of all kinds and descriptions.

(j) "Landowner" means the owner of land, including real property as it appears in the official records of the county, including a trustee, a private corporation or other entity, and an owner of a condominium unit.

(k) "Market value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Market value must be determined in accordance with Section 27-35-50 and must conform to the Uniform Standards of Professional Appraisers Practice.

(*l*) "Project" means any development, improvement, property, utility, facility, works, enterprise or service undertaken after April 1, 2002, or established under the provisions of this chapter, including, but not limited to, the following:

(i) Water management and control for the lands within the district and connection of some or any of such facilities with roads and bridges;

(ii) Water supply, sewer and wastewater management, reclamation and reuse, or any combination thereof;

(iii) Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill or cut and roadways over levees and embankments;

(iv) District roads equal to or exceeding the specifications of the county in which the district roads are located, including street lights and the location of underground utilities;

(v) Parks and facilities for indoor and outdoor recreational, cultural and educational uses, and other tourism related infrastructure and facilities;

(vi) Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;

(vii) Security, except that the district may not exercise any police power but may contract with the appropriate local governmental agencies for an increased level of such services within the district boundaries;

(viii) Waste collection and disposal;

(ix) Acquisition, construction, repair, renovation, demolition or removal of:

1. Buildings and site improvements (including fixtures);
2. Potable and nonpotable water supply systems;
3. Sewage and waste disposal systems;
4. Storm water drainage and other drainage systems;
5. Airport facilities;
6. Rail lines and rail spurs;
7. Port facilities;
8. Highways, streets and other roadways;
9. Fire suppression and prevention systems;

10. Utility distribution systems, including, but not limited to, water, electricity, natural gas, telephone and other information and telecommunications facilities, whether by wire, fiber or wireless means; however, electrical, natural gas, telephone and telecommunication systems may be constructed, repaired or renovated only for the purpose of completing the project and connecting to existing utility systems. This provision may not be construed to prevent a city, county or natural gas district from supplying utility service that it is authorized to supply in the service area that it is authorized to serve; and

11. Business, industrial and technology parks and the acquisition of land and acquisition or construction of improvements to land connected with any of the preceding purposes;

(x) County purposes authorized by or defined in Sections 17-5-3 and 19-9-1, except Section 19-9-1(f); and

(xi) Municipal purposes authorized by or defined in Sections 17-5-3, 17-17-301 through 17-17-349, 21-27-23 and 21-33-301.

(m) "Public entity" means any governmental agency, county or municipality, which enters into a contribution agreement with a district in accordance with this chapter.

(n) "Qualified voter" means any landowner within the district who is at least eighteen (18) years of age, or the landowner's authorized representative who is at least eighteen (18) years of age. If the landowner of a parcel consists of more than one (1) person or is a corporation, partnership, limited liability company or any association or legal entity organized to conduct business, the majority interest of the landowners of the parcel shall select one (1) person who is at least eighteen (18) years of age to serve as the "qualified voter" for the group.

(o) "Revenue bonds" means obligations of the district that are payable from revenues derived from sources other than ad valorem taxes on real or personal property and that do not pledge the property, credit or general tax revenue of the district.

(p) "Sewer system" means any plant, system, facility or property, and additions, extensions and improvements thereto, useful or necessary in connection with the collection, treatment or disposal of sewage.

(q) "Water management and control facilities" means any lakes, canals, ditches, reservoirs, dams, levees, floodways, pumping stations or any other works, structures or facilities for the conservation, control, development, utilization and disposal of water, and any purposes incidental thereto.

(r) "Water system" means any plant system, facility or property, and additions, extensions, and improvements thereto, useful or necessary in connection with the development of sources, treatment or purification and distribution of water.

SOURCES: Laws, 2002, ch. 499, § 3; Laws, 2007, ch. 405, § 1, eff July 2, 2007; Laws, 2012, ch. 468, § 1, eff from and after passage (approved Apr. 24, 2012.)

Editor's Note — The Mississippi Attorney General's office determined that the amendment to this section by Laws of 2007, ch. 405 required preclearance.

On July 2, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 405, § 1.

Amendment Notes — The 2012 amendment added (f), (k), (m) and (n) and redesignated the remaining subsections accordingly; and rewrote (*l*).

§ 19-31-7. Establishment of public improvement districts; by local ordinance granting petition; public hearing; contents of ordinance; contribution agreements.

(1) The method for the establishment of a public improvement district shall be pursuant to an ordinance adopted by the governing body of each county in which the land is located granting a petition for the establishment of a public improvement district. The petition for the establishment of a public improvement district shall be filed by the petitioner with the governing body of the county or counties. The petition shall contain:

(a) A description of the boundaries of the district;

(b) The written consent to the establishment of the district by all landowners in the district;

(c) A designation of five (5) persons to be the initial members of the board of directors, who shall serve in that office until replaced by elected members as provided in Section 19-31-9;

(d) The proposed name of the district;

(e) A map of the proposed district showing existing infrastructure, if any; and

(f) Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services.

(2) A public hearing on the petition shall be conducted by the governing body of each county of the proposed district within sixty (60) days after the petition is filed unless an extension of time is requested by the petitioners and granted by the governing body of each county. The hearing shall be held at an accessible location in each county in which the public improvement district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper having general circulation in each county at least once a week for the four (4) successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall be published in the official minutes of the local governing body.

(3) The governing body of each county shall consider the record of the public hearing and any other relevant factors in making its determination to grant or deny a petition for the establishment of a public improvement district.

(4) An ordinance establishing a public improvement district shall include the boundaries of the district, the names of the five (5) persons designated to

be the initial members of the board of directors of the district and the name of the district.

(5) If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipality, then the petition requesting establishment of a public improvement district under this chapter shall be filed by the petitioner with that particular municipality. In such event, the duties of the county with regard to the petition shall be the duties of the municipality. If any of the land area of a proposed district is within the land area of a municipality, the governing body of the county may not create the district without the approval of the municipality.

(6) The governing body of any governmental agency, county and/or municipality may enter into contribution agreements with the district.

SOURCES: Laws, 2002, ch. 499, § 4; Laws, 2007, ch. 405, § 2, eff July 2, 2007; Laws, 2012, ch. 468, § 2, eff from and after passage (approved Apr. 24, 2012.)

Editor's Note — The Mississippi Attorney General's office determined that the amendment to this section by Laws of 2007, ch. 405 required preclearance.

On July 2, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 405, § 2.

Amendment Notes — The 2012 amendment substituted "Section 19-31-9" for "in this chapter" at the end of (1)(c); and substituted "sixty (60) days" for "forty-five (45) days" in the first sentence of (2).

§ 19-31-9. Board of directors; membership, terms, election, voting by proxy; oath of office; filling of vacancy; quorum; officers; minutes; compensation.

(1) The board of the district shall exercise the powers granted to the district pursuant to this chapter. The board shall consist of five (5) members as otherwise provided in this section. Each member shall hold office for an initial term of six (6) years and until a successor is chosen and qualifies. The initial members of the board shall be residents of the state, and at least one (1) of the initial members shall be either a qualified voter within the district or an individual resident of the area immediately adjacent to the district. Upon appointment or election, the board members shall elect a chair who shall conduct board meetings.

(2)(a) Beginning six (6) years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified voter of the district, elected by the qualified voters of the district. There shall be an election of members every six (6) years from the date of the ordinance establishing the district. The district manager shall determine the date and time of the election, which election must be held at least twenty (20) days before the anniversary date of the ordinance establishing the district. If a contribution agreement exists, then the governing body of the public entity that is a party to the contribution agreement may appoint one (1) of the five (5) members to the board of the district at the time of the election in lieu of electing that member.

(b) Candidates must qualify in writing by submitting a "Statement of Intent," as prescribed in this paragraph, to the district manager thirty (30) days before the election. The district manager shall prepare a ballot of all candidates qualified to run for office twenty-eight (28) days before the election.

Statement of Intent

Candidate for (insert name of district) Public Improvement District

I, (name of candidate as it will appear on the ballot),
(mailing address, street address, city, state, zip code, telephone number of the candidate), certify that I am a qualified voter, as defined in Section 19-31-5, Mississippi Code of 1972, of the (insert name of public improvement district) Public Improvement District in the State of Mississippi; and I do hereby declare my candidacy for Board of the (insert name of public improvement district) Public Improvement District at the election to be held on (insert date of election).

____
(Signature of candidate) (Date)
Received by ______________________________
(Signature) (Title) (Date)

(c) Notice of the election shall be announced at a public meeting of the board at least ninety (90) days before the date of the election and shall be published once a week for two (2) consecutive weeks in a newspaper which is in general circulation in the area of the district, the last day of such publication to be not fewer than fourteen (14) days nor more than twenty-eight (28) days before the election. In addition, notice of the election shall be sent by United States first-class mail, not fewer than fourteen (14) days before the election, to all qualified voters at their last known address as shown on the tax rolls. Instructions on how all qualified voters may participate in the election, along with sample proxies, shall be provided as part of the notice required by this paragraph, and the location, date and time of the election shall be included on all instructions and notices.

(d) Each qualified voter shall be entitled to cast only one (1) ballot to elect each of the board members, regardless of the number of parcels owned by that voter within the district. Parcels may not be aggregated for determining the number of ballots allowed to be cast by a qualified voter. A list of qualified voters in the form of a voter roll must be kept current by the district manager and deemed final thirty (30) days before the election.

(e) A qualified voter may vote in person or by proxy in writing. A vote cast by proxy must be submitted at or within fourteen (14) days before the election and must be submitted in the form prescribed in this section. Each proxy must be signed by the qualified voter for which the vote is cast and must contain the typed or printed name of the individual who signed the proxy and the street address, legal description of the property or the property's tax parcel identification number. The signature on a proxy need not be notarized. All votes cast by proxy must be reflected in the voter roll.

Proxy for Election

(Insert name of district) Public Improvement District

I, ____________________, (name of qualified voter); ____________________ (street address); ____________________ (legal description); ____________________ (tax parcel identification number). [NOTE: To be considered, this proxy must contain at least one (1) of either: the street address; legal description; or tax parcel identification number.]

1. Do constitute and appoint ____________________ (name), attorney and agent for me, and in my name, place and stead, to vote as my proxy for the election of members of the Board of Directors of the (name of district) Public Improvement District on (insert date), at the (insert voting location/facility name with street address); OR (only choose one)

2. Do hereby cast my vote for: ____________________ [print or type name of person being voted for — PLEASE NOTE THAT YOUR VOTE MUST BE FOR A QUALIFIED VOTER (AS DEFINED IN MISSISSIPPI CODE SECTION 19-31-5) OF THE DISTRICT. A QUALIFIED VOTER MEANS ANY LANDOWNER OF THE DISTRICT WHO IS AT LEAST EIGHTEEN (18) YEARS OF AGE OR AN AUTHORIZED REPRESENTATIVE OF THE LANDOWNER WHO IS ALSO AT LEAST EIGHTEEN (18) YEARS OF AGE.] to be elected as a member of the Board of Directors of the (name of district) Public Improvement District for a term beginning (date of term) and ending six (6) years from that date or until a successor is chosen.

I understand that I have the right to revoke this proxy at any time before the election. I understand that I have the right to be present in person at the election.

I have executed this proxy on (insert date).

____

(Printed Name of Qualified Voter)

____

(Signature of Qualified Voter)

(f) A qualified voter may cast only one (1) vote for each of the five (5) board member positions. When a qualified voter casts a vote for the same person more than once, only one (1) of the votes cast for that person will be counted. When a qualified voter casts more votes to elect board members than he or she is entitled to cast, all votes are invalid, and the qualified voter is deemed to have voted for none of them. When a qualified voter casts fewer votes to elect board members than he or she is entitled to cast, all votes cast by the qualified voter must be counted, but no votes shall be counted more than once.

(g) If a board member dies, resigns or otherwise is prevented from serving as a board member, the board of the district shall appoint a member to fill the remainder of the board member's term. If no qualified voter is willing to serve on the board of the district, the governing body that established the district shall appoint members as necessary to fill any vacancy for the remainder of the term.

(3) Members of the board shall be known as directors and, upon entering into office, shall take an oath of office. They shall hold office for the terms for which they were elected or appointed and until their successors are chosen and qualified. If during the term of office, a vacancy occurs, the remaining members of the board shall fill the vacancy by an appointment for the remainder of the unexpired term.

(4) A majority of the members of the board constitutes a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the district shall be upon a vote of a majority of the members present unless general law or a rule of the district requires a greater number. If a quorum cannot be obtained in a board meeting, the governing body that established the district shall appoint members as necessary to replace any board member missing three (3) consecutive meetings.

(5) As soon as practicable after each election or appointment, the board shall organize by electing one (1) of its members as chair and by electing a secretary, who need not be a member of the board, and such other officers as the board may deem necessary.

(6) The board shall keep a permanent minute book in which shall be recorded minutes of all meetings, resolutions, ordinances, proceedings and all corporate acts.

(7) Members of the board may receive per diem compensation for services in an amount as provided under Section 25-3-69, and shall be entitled to expenses necessarily incurred in the discharge of their duties in accordance with Section 25-3-41. Any payments for compensation and expenses shall be paid from funds of the district.

SOURCES: Laws, 2002, ch. 499, § 5; Laws, 2008, ch. 463, § 1, eff July 9, 2008; Laws, 2012, ch. 468, § 3, eff from and after passage (approved Apr. 24, 2012.)

Editor's Note — On July 9, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 463, § 1.

Amendment Notes — The 2012 amendment rewrote (1) and (2); and added the last sentence in (4).

ATTORNEY GENERAL OPINIONS

In granting a petition to establish a public improvement district, a county board of supervisors has no authority to alter the petition by naming as initial directors any persons other than those named in the petition. Dulaney, Sept. 15, 2006, A.G. Op. 06-0398.

§ 19-31-11. District manager; powers and duties; compensation; treasurer; district funds; audit; depository for district funds.

(1) The board shall employ and fix the compensation of a district manager. The district manager shall have charge and supervision of the works of the district and shall be responsible for (a) preserving and maintaining any

improvement or facility constructed or erected pursuant to the provisions of this chapter, (b) maintaining and operating the equipment owned by the district, and (c) for performing such other duties as may be prescribed by the board. The district manager may hire or otherwise employ and terminate the employment of such other persons including, without limitation, professional, supervisory and clerical employees, as may be necessary as authorized by the board. The compensation and other conditions of employment of the officers and employees of the district shall be as provided by the board. The district manager, a board member or district employee may be a stockholder, officer or employee of a landowner.

(2) The board shall designate a person who is a resident of the state as treasurer of the district, who shall have charge of the funds of the district. Such funds shall be disbursed only upon the order or pursuant to the resolution of the board by warrant or check countersigned by the treasurer and by such other person as may be authorized by the board. The board may give the treasurer such other or additional powers and duties as the board may deem appropriate and may fix his or her compensation. The board may require the treasurer to give a bond in such amount on such terms, and with such sureties as may be deemed satisfactory to the board to secure the performance by the treasurer of his or her powers and duties. The financial records of the district shall be audited by an independent certified public accountant at least once a year.

(3) The board may select as a depository for its funds any qualified public depository as provided for under Sections 27-105-301 through 27-105-371.

SOURCES: Laws, 2002, ch. 499, § 6, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-13. Compliance with county budget law; submission of proposed annual budget 60 days prior to adoption.

(1) The district shall comply with Sections 19-11-1 through 19-11-27, the County Budget Law.

(2) At least sixty (60) days before adoption of the annual budget, the district board shall submit to the local governing authorities having jurisdiction over the area included in the district for purposes of disclosure and information only, the proposed annual budget for the ensuing fiscal year and any proposed long-term financial plan or program of the district for future operations.

SOURCES: Laws, 2002, ch. 499, § 7, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-15. Full disclosure of information relating to public financing and maintenance of improvements.

The district shall take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the district. Such information shall be made available to all existing residents and to all prospective residents of the district. The district shall furnish each developer of a residential development within the district with sufficient copies of that information who shall provide each prospective initial purchaser of property in that development with a copy.

SOURCES: Laws, 2002, ch. 499, § 8, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-17. Powers of district.

The district shall have, and the board may exercise, the power:

(a) To sue and be sued in the name of the district.

(b) To adopt and use a seal and authorize the use of a facsimile thereof.

(c) To acquire, by purchase, gift, devise or otherwise, and to dispose of, real and personal property.

(d) To dedicate, donate or convey in any manner, real and personal property under such terms and conditions as may be agreed upon, to:

(i) Nonprofit entities that have been issued a certificate of public convenience and necessity by the Public Service Commission; or

(ii) Governmental entities.

(e) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(f) To contract for the services of consultants to perform planning, engineering, financial, legal, or other appropriate services of a professional nature.

(g) To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government or any person or any organization for any district purposes and enter into agreements required in connection therewith; and to hold, use and dispose of such monies or property for any district purposes in accordance with the terms of the gift, grant, loan or agreement relating thereto.

(h) To adopt bylaws prescribing the powers, duties and functions of the officers of the district, the conduct of the business of the district and the maintenance of records.

(i) To maintain an office at such place or places as it may designate within a county in which the district is located, which office must be reasonably accessible to the landowners. Meetings shall be held at such office or such other location as may be designated by the board.

(j) To hold, control and acquire by donation, or purchase or dispose of, any public servitudes or dedications to public use and to make use of such servitudes or dedications for any of the purposes authorized by this chapter.

(k) To lease as lessor or lessee to or from any person, firm, corporation, association, or body public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out any of the purposes authorized by this chapter.

(*l*) To borrow money and issue bonds, certificates, warrants, notes or other evidence of indebtedness as provided in this chapter; to levy such special assessments as may be authorized; and to charge, collect and enforce fees and other user charges.

(m) To acquire property within the boundaries of the district for public use through condemnation, exercised pursuant to Sections 11-27-1 through 11-27-51, subject to the approval of the governing body of the county and/or the municipality that enacted the ordinance establishing the district.

(n) To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services; to finance projects and to pledge user charges and fees for the payment of any bond or other indebtedness of the district; and to enforce the receipt and collection of user charges and fees in the manner prescribed by resolution not inconsistent with law.

(o) To cooperate, contract, or enter into contribution agreements with other governmental agencies, including the governing bodies of counties and/or municipalities, as may be necessary, convenient, incidental or proper in connection with any of the powers, duties or purposes authorized by this chapter.

(p) To determine, order, levy, impose, collect and enforce special assessments pursuant to this chapter.

(q) To enter into interlocal cooperative agreements pursuant to Sections 17-13-1 through 17-13-17.

(r) To covenant with the holders of assessment bonds or other obligations that it will diligently and faithfully enforce and collect all the special assessments, charges and fees, and interest and penalties thereon.

(s) To exercise all of the powers necessary and proper in connection with any of the powers, duties or purposes authorized by this chapter.

SOURCES: Laws, 2002, ch. 499, § 9; Laws, 2003, ch. 488, § 1; Laws, 2012, ch. 468, § 4, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment rewrote (n); deleted "with" following "To cooperate" in (o); substituted "Sections 17-13-1 through 17-13-17" for "Section 17-13-1 et seq." at the end of (q); added (r); and redesignated former (r) as (s).

§ 19-31-19. Special powers relating to public improvements and community facilities.

The district shall have, and the board may exercise, any or all of the special powers relating to public improvements and community facilities authorized by this chapter. The district shall have the power to finance, fund, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain systems, facilities, projects and basic infrastructures that are within the district, or which benefit or serve the district, for the following:

(a) Water management and control for the lands within the district and connection of some or any of such facilities with roads and bridges;

(b) Water supply, sewer and wastewater management, reclamation and reuse, or any combination thereof;

(c) Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill or cut and roadways over levees and embankments;

(d) District roads equal to or exceeding the specifications of the county in which such district roads are located, including street lights and the location of underground utilities;

(e) Parks and facilities for indoor and outdoor recreational, cultural and educational uses, and other tourism related infrastructure and facilities;

(f) Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;

(g) Security, except that the district may not exercise any police power, but may contract with the appropriate local governmental agencies for an increased level of such services within the district boundaries;

(h) Waste collection and disposal;

(i) Systems, as defined in Section 21-27-11(b); and

(j) Projects, as defined in this chapter.

SOURCES: Laws, 2002, ch. 499 , § 10; Laws, 2012, ch. 468, § 5, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment rewrote the last sentence in the introductory paragraph; in (d), added "including" preceding "street lights" and "and the location of underground utilities" thereafter; added (j); and made a minor stylistic changes.

ATTORNEY GENERAL OPINIONS

A public improvement district (PID) has the authority to acquire existing infrastructure improvements from a developer for any of the purposes enumerated in this section. The requirement of § 19-31-37 that construction or purchase of materials or supplies comply with the provisions of §§ 31-7-1 et seq. applies only to the construction of infrastructure by a PID, and not to acquisition of existing infrastructure. This opinion presumes that there was no prior agreement or understanding between the developer and the PID or its members for the PID to purchase the improvements once constructed. Clark, Dec. 12, 2003, A.G. Op. 03-0666.

§ 19-31-21. Public hearing and determination of public interest required before district may purchase, sell, dedicate, donate or convey in any manner, or enter into management contract for public wastewater utility.

No public improvement district may purchase, sell, dedicate, donate or convey in any manner a water or wastewater utility that provides service to the public, or enter into a management contract for such facilities, until the board has held a public hearing on the purchase, sale, dedication, donation, conveyance or management contract and has made a determination that the purchase, sale or management contract is in the public interest.

SOURCES: Laws, 2002, ch. 499, § 11; Laws, 2003, ch. 488, § 2, eff from and after passage (approved Mar. 28, 2003.)

§ 19-31-23. District authorized to issue bonds, notes, and other evidences of debt; public hearing before issuing bonds or entering into contribution agreement with public entity; notice; investment of monies not immediately needed.

(1) The district may issue and sell from time to time bonds, notes, negotiable notes, tax anticipation notes, bond anticipation notes, other fund anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, certificates of participation, debentures, warrants, commercial paper or other obligations or evidences of indebtedness to provide funds for and to fulfill and achieve its public purpose or corporate purposes, as set forth in this chapter, including, but not limited to, the payment of all or a portion of the costs of a project, to provide amounts necessary for any corporate purposes, including incidental expenses in connection with the issuance of the obligations, the payment of principal and interest on the obligations of the district, the establishment of reserves to secure such obligations, and all other purposes and expenditures of the district incident to and necessary or convenient to carry out its public functions or corporate purposes, and any credit enhancement for such obligations.

(2) Before the issuance of any bonds as authorized under this chapter, the district shall hold a public hearing on the advisability of the indebtedness. Notice of the hearing must be published twice in a newspaper having general circulation in each county where the district is located. The final publication of notice must be at least ten (10) days before the public hearing. The district shall give, by United States first-class mail, written notice of the public hearing to all qualified voters in the district. The notice must be addressed to "Property Owner" and mailed by United States first-class mail to the current address of the owner, as reflected on tax rolls of property located in the district.

(3)(a) If a district proposes to enter into a contribution agreement with a public entity for any bond issue, the public entity shall hold a public hearing on the advisability of the contribution agreement for any bonds the district proposes to enter.

(b) Notice of the hearing must be published twice in a newspaper having general circulation in each county where the public entity is located. The final publication of notice must be at least ten (10) days before the public hearing.

(c) The notice must state the following:

(i) Time and place of the hearing;

(ii) General nature of the proposed improvement;

(iii) Estimated cost of the improvement;

(iv) Boundaries of the public improvement district;

(v) Proposed method of assessment;

(vi) Proposed amount and term of indebtedness;

(vii) Name of the public entity entering into the contribution agreement; and

(viii) Proposed amount of contribution by the public entity.

(d) The hearing may be adjourned from time to time until the governing body of the public entity makes findings by resolution as to the following:

(i) Advisability of the improvement;

(ii) Nature of the improvement;

(iii) Estimated cost of the improvement;

(iv) Boundaries of the public improvement district;

(v) Method of assessment;

(vi) Market value of real property within the district determined in accordance with paragraph (c) of this subsection; and

(vii) Terms of the contribution agreement.

(e) As provided in subsection (3)(d)(vi) of this section, the governing body of the public entity shall obtain an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice, with special consideration given to the Income Approach to Value using a discounted cash flow analysis of the entire commercial, residential or industrial subdivision. The appraisal must satisfy all parties to the contribution agreement that the value of the property in the district will be sufficient to ensure payment of any obligation to which a public entity is subject.

(4) Except as may otherwise be provided by the district, all obligations issued by the district shall be negotiable instruments and payable solely from the levy of any special assessment by the district or from any other sources whatsoever that may be available to the district but shall not be secured by the full faith and credit of the state or the county or municipality that created the district.

(5) Obligations shall be authorized, issued and sold by a resolution or resolutions of the district adopted as provided in this chapter. Such bonds or obligations may be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, including variable, adjustable, or zero interest rates, be payable at such time or times, be in such denominations, be sold at such price or prices, at public or private negotiated sale, after advertisement as is provided for in Section 17-21-53(2) for and in connection with any public sale, be in such form, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption and be entitled to such priorities on the income, revenue and receipts of, or available to, the district as may be provided by the district in the resolution or resolutions providing for the issuance and sale of the bonds or obligations of the district.

(6) The obligations of the district shall be signed by such directors or officers of the district by either manual or facsimile signatures as shall be determined by resolution or resolutions of the district, and shall have impressed or imprinted thereon the seal of the district or a facsimile thereof.

(7) Any obligations of the district may be validly issued, sold and delivered notwithstanding that one or more of the directors or officers of the

district signing such obligations or whose facsimile signature or signatures may be on the obligations shall have ceased to be such director or officer of the district at the time such obligations shall actually have been delivered.

(8) Obligations of the district may be sold in such manner and from time to time as may be determined by the district to be most beneficial, and the district may pay all expenses, premiums, fees or commissions that it deems necessary or advantageous in connection with the issuance and sale thereof, subject to the provisions of this chapter.

(9) The district may authorize the establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve or such other funds or reserves as the district may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture of trust or similar instrument or agreement pursuant to the provisions of which the issuance of bonds or other obligations of the district may be authorized.

(10) Notwithstanding any other law to the contrary, but subject to any agreement with bondholders or noteholders, monies of the district not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, may be invested in the following:

(a) Obligations of any municipality, the State of Mississippi or the United States of America;

(b) Obligations of which the principal and interest are guaranteed by the State of Mississippi or the United States of America;

(c) Obligations of any corporation wholly owned by the United States of America;

(d) Obligations of any corporation sponsored by the United States of America which are, or may become, eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) Obligations of insurance firms or other corporations whose investments are rated "A" or better by recognized rating companies;

(f) Certificates of deposit or time deposits of qualified depositories of the State of Mississippi as approved by the State Depository Commission, secured in such manner, if any, as the commission determines appropriate;

(g) Contracts for the purchase and sale of obligations of the type described in paragraphs (a) through (e) of this subsection;

(h) Repurchase agreements secured by obligations described in paragraphs (a) through (e) of this subsection; and

(i) Money market funds, the assets of which are required to be invested in obligations described in paragraphs (a) through (f) of this subsection.

(11) Any cost, obligation or expense incurred for any of the purposes specified in this chapter shall be a part of the project costs and may be paid or reimbursed as such out of the proceeds of bonds or other obligations issued by the district.

(12) Neither the directors of the board nor any person executing the bonds shall be personally liable for the bonds or be subject to any personal liability by

reason of the issuance thereof. No earnings or assets of the district shall accrue to the benefit of any private persons. However, the limitation of liability provided for in this subsection shall not apply to any gross negligence or criminal negligence on the part of any director or person executing the bonds.

(13) The district may avail itself of the provisions of Sections 31-13-1 through 31-13-11.

(14) This chapter constitutes full and complete authority for the issuance of bonds and the exercise of the powers of the district provided herein. No procedures or proceedings, publications, notices, consents, approvals, orders, acts or things by the board or any board, officers, commission, department, agency or instrumentality of the district, other than those required by this chapter, shall be required to perform anything under this chapter, except that the issuance or sale of bonds pursuant to the provisions of this chapter shall comply with the general law requirements applicable to the issuance or sale of bonds by the district. Nothing in this chapter shall be construed to authorize the district to utilize bond proceeds to fund the ongoing operations of the district.

(15) Before incurring any debt as provided in subsection (1) of this section, the district may, but shall not be required to, secure an agreement from one or more developers obligating such developer or developers:

(a) To effect the completion of all or any portion of a project at no cost to the district;

(b) To pay all or any portion of the real property taxes due on the project in a timely manner; and

(c) To maintain and operate all or any portion of the buildings or other facilities or improvements of the project in such a manner as to preserve property values.

No breach of any such agreement shall impose any pecuniary liability upon a district or any charge upon its general credit or against its taxing powers.

Additionally, the district may enter into an agreement with the developer under which the developer may construct all or any part of the project with private funds in advance of issuance of bonds and may be reimbursed by the district for actual costs incurred by the developer upon issuance and delivery of bonds and receipt of the proceeds, conditioned upon dedication of the project by the developer to the district, a governmental agency, a county or a municipality to assure public use and access. This condition shall not apply to the privately owned portion of a project for which the Mississippi Development Authority has issued a certificate of convenience and necessity pursuant to the Regional Economic Development Act.

As used in this section, the term "developer" means any entity or natural person which enters into an agreement with a district whereby the developer agrees to construct, operate and maintain or procure the construction, operation and maintenance of a project or projects, or portions thereof, upon land within the district.

SOURCES: Laws, 2002, ch. 499, § 12; Laws, 2007, ch. 405, § 3; Laws, 2012, ch. 468, § 6, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment added (2), (3), and (10) and redesignated the remaining subsections accordingly; and substituted "Section 17-21-53(2) for and in connection with any public sale, be in such form" for "Section 17-21-53(1), (2), be in such form" in the second sentence of (5).

Cross References — Mississippi Development Authority generally, see §§ 57-1-1 et seq.

Regional Economic Development Act, see §§ 57-64-1 et seq.

§ 19-31-25. Pledge made by district valid and binding; recording or filing not required for perfection of lien or security interest in pledged property.

Any pledge made by the district shall be valid and binding from time to time when the pledge is made without the need for physical delivery of any pledged property. The money, assets or revenues of the district so pledged and thereafter received by the district shall be immediately subject to the lien of such pledge and shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed in order to establish and perfect a lien or security interest in the property so pledged by the district.

SOURCES: Laws, 2002, ch. 499, § 13, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-27. Creation and operation of district a public and governmental purpose; district exempt from state and local taxes.

It is hereby determined that the creation of the district and the carrying out of its public functions and corporate purposes is, in all respects, a public and governmental purpose for the benefit of the people of the state and for the improvement of their health, safety, welfare, prosperity and security, that such functions and purposes are public purposes and that the district will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. All obligations authorized to be issued by the district pursuant to the provisions of this chapter, together with interest thereof, income therefrom, and gain upon the sale thereof shall be exempt from all state and local taxes.

SOURCES: Laws, 2002, ch. 499, § 14, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-29. Bonds.

Bonds issued under the provisions of this chapter shall be limited obligations of the district payable solely from the sources pledged for the payment thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the full faith and credit of the state nor the full faith and credit of any governmental unit of the state are pledged to the payment of the principal of or the interest on such bonds. Except as provided in a contribution agreement, the issuance of bonds under the provisions of this chapter shall not directly, indirectly or contingently obligate the state or any governmental unit of the state to levy any taxes or to make any appropriation for their payment arising out of contracts authorized under this chapter.

SOURCES: Laws, 2002, ch. 499, § 15; Laws, 2012, ch. 468, § 7, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment added "Except as provide in a contribution agreement" to the beginning of the last sentence.

§ 19-31-31. Authorization for certain persons to use certain funds for purchase of district-issued obligations.

The state and all public officers, any county, municipality or other subdivision or instrumentality of the state, any political subdivision, any bank, banker, trust company, savings bank and institution, building and loan association, savings and loan association, investment company or any person carrying on a banking or investment business, any insurance company or business, insurance association and any person carrying on an insurance business, any executor, administrator, curator, trustee and other fiduciary, and any retirement system fund may legally invest any sinking funds, monies or other funds belonging to them or within their control in any bonds or other obligations issued by the district pursuant to the provisions of this chapter, and such bonds or other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize such persons, firms, corporations, associations, political subdivisions and officers, or other entities public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations of the district and that any such bonds shall be authorized security for all public deposits. However, nothing contained in this section with regard to legal investments or security for public deposits shall be construed as relieving any such person, firm, corporation or other entity from any duty of exercising reasonable care in selecting securities.

SOURCES: Laws, 2002, ch. 499, § 16, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-33. Benefit special assessments; maintenance special assessments; levy, collection and enforcement; compensation of tax assessor and collector; installments; prepayment of benefit special assessments.

(1) The board shall annually determine, order and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance district facilities and projects that are levied under this chapter. These assessments may be due and collected during each year that county taxes are due and collected, in which case such annual installment and levy shall be evidenced to and certified to the assessor by the board not later than August 31 of each year. Such assessments shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds thereof shall be paid to the district. These benefit special assessments shall be a lien on the property against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes. All statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the assessment for the exercise of the district's powers under this chapter shall be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land.

(2) To maintain and preserve the facilities and projects of the district, the board shall levy a maintenance special assessment. This assessment may be evidenced by and certified to the assessor by the board of directors not later than August 31 of each year and shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds therefrom shall be paid to the district. These maintenance special assessments shall be a lien on the property against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes and all statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the maintenance special assessment for the exercise of the district's powers under this chapter shall be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

(3) Benefit special assessments and maintenance special assessments authorized by this section shall be levied and payable in annual installments for each year for which bonds secured by the assessment are outstanding. The tax collector shall collect and enforce benefit special assessments and mainte-

nance special assessments in the same manner and at the same time as ad valorem taxes. Benefit special assessments and maintenance special assessments shall constitute a lien on the property against which assessed until paid and shall be on a parity with the lien of state, county, municipal and school board property taxes.

(4) The tax assessor and tax collector are entitled to reasonable compensation for preparing the rolls and collecting the assessments.

(5) District assessments may be made payable in no more than forty (40) yearly installments. Benefit special assessments are prepayable. Any prepayment of benefit special assessments must be credited against the payor's pro rata share of principal and interest of the indebtedness.

SOURCES: Laws, 2002, ch. 499, § 17; Laws, 2007, ch. 405, § 4; Laws, 2012, ch. 468, § 8, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment added "benefit special asesments and maintenance special" in the next-to-last sentence of (3); and added the last two sentences in (5).

§ 19-31-35. Enforcement of liens.

Any lien in favor of the district arising under this chapter may be enforced by the district in a court of competent jurisdiction as provided by law.

SOURCES: Laws, 2002, ch. 499, § 18; Laws, 2012, ch. 468, § 9, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment deleted the former last sentence, which read: "Such proceedings may be brought at any time after the expiration of one (1) year from the date any tax or installment thereof becomes delinquent."

§ 19-31-37. Compliance with public purchasing provisions of Title 31, Chapter 7.

The district shall comply with the provisions of Section 31-7-1 et seq., regarding the construction of public works or the purchase of materials or supplies.

SOURCES: Laws, 2002, ch. 499, § 19, eff from and after passage (approved Apr. 1, 2002.)

Cross References — Purchase of commodities by agencies of the state, see §§ 31-7-1 et seq.

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A public improvement district (PID) has the authority to acquire existing infrastructure improvements from a developer for any of the purposes enumerated in this section. The requirement of this section that construction or purchase of materials or supplies comply with the provisions of §§ 31-7-1 et seq. applies only to the construction of infrastructure by a PID, and not to acquisition of existing infrastructure. This opinion presumes that there was no prior agreement or understanding between the developer and the PID or its members for the PID to purchase the improvements once constructed. Clark, Dec. 12, 2003, A.G. Op. 03-0666.

§ 19-31-39. Establishment and collection of rates, fees, rentals, or other charges for use of district facilities and services; public hearing; notice.

(1) The district may prescribe, fix, establish and collect rates, fees, rentals or other charges for the facilities and services furnished by the district, within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities and water and sewer systems. The district may also recover the costs of making connection with any district facility or system and provide for reasonable penalties against any user or property for any such rates, fees, rentals or other charges that are delinquent.

(2) No such rates, fees, rentals or other charges for any of the facilities or services of the district may be fixed until after a public hearing at which all the users of the proposed facility or services shall have an opportunity to be heard concerning the proposed rates, fees, rentals or other charges. Notice of such public hearing setting forth the proposed schedule of rates, fees, rentals and other charges shall be published in a newspaper having general circulation in each county where the district is located once at least ten (10) days before such public hearing.

SOURCES: Laws, 2002, ch. 499, § 20; Laws, 2012, ch. 468, § 10, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "published in a newspaper having general circulation in each county where the district is located once" for "published in the official journal of the district once" near the end of (2); and made minor stylistic changes.

§ 19-31-41. Nonpayment, delinquency charges, and discontinuance of service.

The district shall provide by ordinance with respect to nonpayment, delinquency charges and discontinuance of service for water and sewer services provided by the district.

SOURCES: Laws, 2002, ch. 499, § 21, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-43. Change in district boundaries; termination or dissolution of district.

(1) The boundaries of the district may be contracted or expanded in the same manner in which the district was created pursuant to this chapter; however, the petition must be filed by the board and must contain the written

consent of all landowners within only the proposed area of expansion or contraction.

(2)(a) Subject to the limitations of paragraph (b) of this subsection, the district may be terminated or dissolved in one (1) of the following ways:

(i) The district may be terminated or dissolved upon the transfer of all the public improvement services of the district to a unit of local government. The district shall be terminated in accordance with a plan of termination which shall be adopted by the board of directors and filed with the clerk of the court.

(ii) If, within five (5) years after the effective date of the ordinance creating the district, a landowner has not received a development permit on some part or all of the area covered by the district, then the district will be automatically dissolved and a court of competent jurisdiction shall cause a statement to that effect to be filed in the public records.

(iii) If the district has become inactive, the county or municipality that created the district shall be informed and shall take appropriate action.

(b) Following the establishment of the district with no timely appeal challenging the district, a district may not be dissolved or terminated if any bonds issued by the district, or bonds for which the district is obligated, are outstanding or are secured by special assessments or other security instruments to which the district is a party in connection with the bonds.

SOURCES: Laws, 2002, ch. 499, § 22; Laws, 2012, ch. 468, § 11, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment added "however, the petition ... expansion or contraction" at the end of (1); and in (2), added "Subject to the limitations of paragraph (b) of this subsection" to the beginning of (2)(a), substituted item designators "(i)," "(ii)" and "(iii)" for "(a)," "(b)" and "(c)," and added (b).

§ 19-31-45. Disclosure statement in contracts and instruments of conveyance of parcels of real property.

After the establishment of a district under this chapter, each contract and instrument of conveyance of a parcel of real property within the district shall include, immediately before the space reserved in the contract and instrument of conveyance for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract and the instrument of conveyance: "THE (Name of District) PUBLIC IMPROVEMENT DISTRICT MAY IMPOSE AND LEVY ASSESSMENTS ON THIS PROPERTY. THESE ASSESSMENTS PAY THE CONSTRUCTION, OPERATION AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW."

However, the failure to include the above language does not and may not be deemed to invalidate any assessment levied by the district or the contract or instrument of conveyance of the real property.

SOURCES: Laws, 2002, ch. 499, § 23; Laws, 2012, ch. 468, § 12, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment, in the first sentence of the first paragraph, substituted "each contract and instrument of conveyance of a parcel of real property within the district" for "each contract for the initial sale of a parcel of real property and each contract for the initial sale of a residential unit within the district" and inserted "and instrument of conveyance" and "and the instrument of conveyance"; and added the second paragraph.

§ 19-31-47. Notice of establishment of public improvement district.

Within thirty (30) days after the effective date of the ordinance establishing a public improvement district under this chapter, the district shall cause to be recorded in the sectional index and the subdivisional index, if applicable, in the land records in each county in which it is located a "Notice of Establishment of the ____________________ Public Improvement District." The notice shall include the legal description of the district and a copy of the disclosure statement specified in this chapter.

SOURCES: Laws, 2002, ch. 499, § 24; Laws, 2007, ch. 405, § 5, eff July 2, 2007; Laws, 2012, ch. 468, § 13, eff from and after passage (approved Apr. 24, 2012.)

Editor's Note — The Mississippi Attorney General's office determined that the amendment to this section by Laws of 2007, ch. 405 required preclearance.

On July 2, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 405, § 5.

Amendment Notes — The 2012 amendment inserted "sectional index and the subdivisional index, if applicable, in the" in the first sentence.

§ 19-31-49. Chapter to be liberally construed.

This chapter, being necessary for the welfare of the state and its residents, shall be liberally construed to effectuate its purposes.

SOURCES: Laws, 2002, ch. 499, § 25, eff from and after passage (approved Apr. 1, 2002.)

§ 19-31-51. Certificate of public convenience and necessity.

(1) No public improvement district established under this chapter shall provide any utility service described in Section 77-3-3(d) to or for the public for compensation without first obtaining a certificate of public convenience and necessity from the Public Service Commission.

(2) Nothing contained in this section shall prohibit the Public Service Commission from issuing a certificate of public convenience and necessity to any person for service in uncertificated areas within public improvement district boundaries.

(3) Notwithstanding any law to the contrary, water and/or sewer districts that petition the Public Service Commission for a certificate of public convenience and necessity for any uncertificated area shall give written notice by regular mail to all property owners located in such area, as reflected on the tax rolls of the county or counties at the time of filing the petition, at the address listed on the tax rolls of the county or counties within such area, and to public improvement districts and other public entities located in such area. Such notice shall give the property owners and the governmental entities instructions on how they may appear before the Public Service Commission and make any objections or otherwise participate as an interested party.

SOURCES: Laws, 2002, ch. 499, § 26; Laws, 2003, ch. 307, § 1, eff from and after passage (approved Feb. 27, 2003.)

Cross References — Certificate of public convenience and necessity granting exclusive right to public utility to provide services for which certificate issued, see § 77-3-12.

[illegible] public utilities and [illegible]
[illegible]

[illegible] Public Service Commission [illegible] for any uncertificated area shall give written notice [illegible] property owners [illegible] position [illegible] electric and other public utilities [illegible] shall give the property owners and the governing [illegible] they may appear before the Public Service Commission [illegible] or otherwise [illegible] as an interested party.

[illegible] 2002, ch. 493, § 27; Laws, 2007, ch. 507, § 1, eff from and after [illegible]

[illegible] this chapter, the [illegible] public improvement district [illegible] Public Improvement District." [illegible] shall include the legal description of the district and a copy of the [illegible]

HISTORY: Laws, 2002, ch. 493, § 28; Laws, 2007, ch. [illegible]; Laws, 2010, ch. 485, § 13, eff from and after passage (approved [illegible]).

Editor's Note — The Mississippi Attorney General's Office [illegible] by Laws of 2007, ch. [illegible] required preclearance [illegible] the United States Attorney General interposed no objection under [illegible] Voting Rights Act of 1965 to the amendment of this section by [illegible]

Amendment Notes — The 2010 amendment inserted [illegible] in the first sentence.

§ 19-31-45. Chapter to be liberally construed.

This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effectuate its purposes.

SOURCES: Laws, 2002, ch. 493, § 29, eff from and after [illegible] 1, 2002.

§ 19-3[illegible] certificate of public con[illegible]

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